United States Court of Appeals for the Second Circuit



APPENDIX

ALA WILDISO

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

74-1449

MISS UNIVERSE, INC.,

Plaintiff-Appellant,

-against-

NATIONAL BROADCASTING CO., INC. and UNIVERSAL CITY STUDIOS, INC.,

Defendants-Appellees,

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX TO APPELLANT'S BRIEF



MYRON KOVE Attorney for Plaintiff-Appellant Office & P. O. Address 747 Third Avenue New York, New York 10017 Telephone: (212) 758-7090 PAGINATION AS IN ORIGINAL COPY

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1	Certified copy of Miss U.S.A. service mark		49a	130a ·
2	Certified copy of Miss United States service mark		49a	131a
3	NBC News Release		50a	132a
4	Three telegrams	:	50a	134a
5	Letter dated February 2, 1970		50a	137a
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7	1969 Exclusive Franchise		58a	143a
8	Official Souvenir Program Book		83a	-
9	Miss U.S.A. Film		108a	
10	Memo dated April 30, 1969	118a	121a	147a
11	Undated letter from Edward Pierce	118a	122a	153a
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D	News clipping dated September 25, 1973	88a	88a	154a
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CIVIL DOCKET

UNITED STATES DISTRICT COURT

MISS UNIVERSE INC.

vs.

70 CIV. 657

NATIONAL BROADCASTING CO. INC., & UNIVERSAL CITY STUDIOS INC.

JUDGE KNAPP

Attorneys

For Plaintiff:

Myron Kove (Sub on 10-4-72) 363 7th Avenue N. Y. 10001 868-5790

For Defendant:

Coudert Bros. 200 Park Ave. NYC 10017

Date	!	Proceedings
Feb. 17-7	0 Filed	complaint & issued summons
Feb. 17-7	0 Filed serve	Order permitting Edward Sutton to summons and complaint.
Feb. 17-7	0 Filed	notice of assignment.
Feb. 20-7	Served	summons with marshal's return. National Broadcasting Co. Inc. In V. Shute on 2-18-70.

DOCKET ENTRIES

Date	Proceedings
Mar. 16-70	Filed Affidavit of Service of summons and complaint upon Universal City Pictures by Morris Schrier, V.P. and Sec. of Corp.
Mar. 24-70	Filed ANSWER of NBC & Universal CB
Mar. 24-70	Filed deft's notice of deposition of pltff.
Mar. 25-70	Filed stipulation and order extending defendant National Broadcasting Co.'s time to answer complaint to 3/23/70. So ordered. Edelstein, J.
Jan. 28-71	Filed plaintiffs NOTICE OF MOTION for summary judgment.
Jan. 28-71	Filed plaintiffs MEMORANDUM in support of motion for summary judgment.
Feb. 26-71	Filed defendants AFFIDAVIT in opposition to plaintiffs motion for summary judgment.
Feb. 26-71	Filed defendants MEMORANDUM in opposition to plaintiffs motion for summary judgment.
Mar. 5-71	Filed Plaintiffs REPLY MEMORANDUM in support of motion for summary judgment.
Mar. 8-71	Filed defts' statement under Rule 9g re opposition to motion for summary judgment.
Apr. 21-71	Filed Opinion (Memorandum) #37558 - Pltff has moved for summary judg. The motion must be denied because there exist genuine issues of material fact as to this first cause of action, etc. So ordered. Edelstein, J. Mailed notice
Oct. 4-72	Filed stip & order that N. S. Beier, is substituted as attys for pltff. So ordered. Knapp, J.

DOCKET ENTRIES

Date	Proceedings
Oct. 4-72	Filed Stip & order that Myron Kove is substituted as attys for pltff. in place & stead of Norman Beier. So ordered. Knapp, J.
Jun. 27-73	Filed Pltf. pre trial order. KNAPP, J.
Oct. 31-73	Filed deft's pretrial memorandum in answer to pltff's pretrial memorandum.
Mar. 15-74	Filed Judgment: Ordered that deft's have judgment against the pltff. dismissing the complaint. Judgment Ent. Clerk. m/n Ent. 3-18-74
Mar. 13-74	Before Knapp, J. Non-Jury trial begun.
Mar. 14-74	Trial continued, deft's motion to dismiss complaint is granted.
Mar. 27-74	Filed pltff's notice of appeal from final judgment in favor of deft's entered on 3-18-74. Mailed copy to Coudert Bros.
Apr. 8-74	Filed pltff's pre-trial memorandum.
Apr. 8-74	Filed Bond undertaking for cost on appeal in the sum of \$250.00 by, The Aetna Casualty & Surety Co.

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

MISS UNIVERSE, INC.,

Plaintiff,

-against-

NATIONAL BROADCASTING CO., INC. and UNIVERSAL CITY STUDIOS, INC.,

Defendants.

- (a) The jurisdiction of this Court rests upon 28 U.S.C. §§ 1331, 1338 and upon the principles of pendent jurisdiction.
- (b) This case arises out of 15 U.S.C. \$ 1114, New York General Business Law \$368-d and the common law of the State of New York.
- (c) Defendants are doing business within the Southern District of New York.
- (d) The matter in controversy exceeds the sum or value of \$10,000, exclusive of interest and costs.
- 2. Plaintiff is a corporation duly organized and existing under the laws of the State of California and maintains an office for the conduct of its business

at 509 Madison Avenue, in the City, County and State of New York. Plaintiff is engaged in the business of sponsoring and producing beauty pageants under the names "Miss Universe" and "Miss U.S.A." Plaintiff has sponsored and produced "Miss Universe" and "Miss U.S.A." beauty pageants since 1952.

- 3. Defendant National Broadcasting Co.,
 Inc. is a corporation organized and existing under the
 laws of the State of Delaware, owns and operates television and radio broadcasting stations and networks
 and maintains a principal office for the conduct of
 its business within the City, County and State of
 New York. Defendant Universal City Studios, Inc. is
 a corporation engaged in the production and distribution of motion pictures for television and theatres.
- 4. Since 1952, plaintiff has expended millions of dollars in advertising and promoting "Miss Universe" and "Miss U.S.A." beauty pageants. Because of plaintiff's long continued use of and substantial investment in the names "Miss Universe" and "Miss U.S.A." these names have gained widespread public recognition as identifying plaintiff's beauty pageants.
 - 5. On May 24, 1966, registrations were

issued to plaintiff for the words "Miss U.S.A." and
"Miss United States of America," on the principal
register of the United States Patent Office, Nos.
808974 and 808975, respectively, as service marks
for promoting the sale of goods and services of others
through the medium of a beauty contest conducted on
a national and regional basis, in Class 101.

- and wide-spread use of the service marks, "Miss U.S.A." and "Miss United States of America" and its extensive promotion and advertising, the public has come to identify those service marks with plaintiff's business.
- 7. Plaintiff's beauty pageants are conducted in accordance with rigidly enforced standard of honesty, public decency and the highest moral principles. The participants in such pageants are closely watched and attended to, constantly chaperoned and always required to conduct themselves in a manner consistent with the principles of the pageant. The "Miss U.S.A." and "Miss Universe" pageants have always been run strictly in accordance with such principles.
- 8. By reason of these strict standards, plaintiff is able successfully to franchise its beauty

pageant to local organizations in the various states from which the "Miss U.S.A." contestants are drawn, and to obtain substantial commercial sponsors for its pageant. Such franchise organizations and commercial sponsors insist on plaintiff's enforcement of an exceedingly high moral code and standard of conduct.

First Cause of Action

- 9. Plaintiff repeats and realleges paragraphs 1 through 8 herein.
- 10. Defendants, commencing at a time unknown to plaintiff, produced a motion picture entitled "McCloud: Who Killed Miss U.S.A.?"
- shown over defendant National Broadcasting Co., Inc.'s nationwide television network on February 17, 1970, consistently uses, in its title and elsewhere, plaintiff's registered service marks "Miss U.S.A.", "Miss United States of America" and various close approximations thereof. Defendants' unauthorized use of plaintiff's service marks is likely to cause confusion, to cause mistake and to deceive the public into believing that defendants' motion picture is somehow

COMPLAINT

sponsored by plaintiff or that plaintiff is related to defendants' motion picture. Plaintiff has given defendants due and timely notice that their use of said marks is unauthorized and unlawful.

- 12. Defendants' unauthorized use of plaintiff's service marks threatens to dilute the distinctive quality of those marks.
- 13. Accordingly, defendant has knowingly and wilfully infringed plaintiff's registered service marks in violation of 15 U.S.C. § 1114.

Second Cause of Action

- 14. Plaintiff repeats and realleges paragraphs 1 through 13 herein.
- plaintiff's "Miss U.S.A." beauty pageant and its participants in a grossly false and misleading manner. By depicting the participants in plaintiff's "Miss U.S.A." pageant as women of loose morals who are unchaperoned by plaintiff, by suggesting that said contestants are lodged in second rate, sleazy accommodations and that they generally associate with people of questionable morality and character, said motion

picture wrongfully holds plaintiff's business up to public ridicule and contempt.

- 16. The statements, implications and innuendoes about plaintiff's beauty pageants contained in defendants' motion picture are false and defamatory of plaintiff's reputation and standing.
- 17. The false and misleading information contained in defendants' motion picture will make it exceedingly difficult for plaintiff to secure local franchise organizations to sponsor the preliminary pageants from which the final contestants are drawn, and to secure substantial commercial sponsors for the pageants.
- 18. Accordingly, defendants' acts constitute trade libel and business disparagement.
- 19. Defendants' acts of trade libel and business disparagement threaten to damage plaintiff in an amount not presently measurable.

Third Cause of Action

- 20. Plaintiff repats and realleges paragraphs 1 through 19 herein.
- 21. Defendants' unauthorized use of plaintiff's service marks constitutes unfair competition.

Å,

- will and its ownership of the valuable service marks heretofore described were all well established and known to defendant at the time defendant began to use those marks. Defendants' use of plaintiff's service marks is for the fraudulent, illegal and unfairpurpose of capitalizing on and reaping the benefit of plaintiff's advertising, reputation and good will, all of which will be badly impaired to plaintiff's detriment. Defendants' acts have diluted and will continue to dilute the distinctive quality of plaintiff's service marks.
- 23. Defendants' acts constitute an attempt to appropriate and trade upon the valuable commercial attraction which inheres in plaintiff's service marks as a result of plaintiff's diligent efforts and substantial investment. If defendants are permitted to continue their unauthorized use of plaintiff's service marks, defendants will secure for themselves a large measure of the benefit from plaintiff's advertising, reputation and good will, to which benefit plaintiff alone is entitled and in the exclusive enjoyment of which plaintiff is entitled to be protected.

24. Accordingly, defendants' acts constitute unfair competition.

Fourth Cause of Action

- 25. Plaintiff repeats and realleges paragraphs 1 through 24 herein.
- 26. Defendants' conduct is likely to injure plaintiff's business reputation and to dilute the distinctive quality of plaintiff's registered service marks.
- 27. Accordingly, defendants' conduct is in violation of § 368-d of the New York General Business Law.

WHEREFORE, plaintiff demands judgment:

- a. Enjoining defendants from using in any form the words "Miss U.S.A.", "Miss United States of America" or any imitations or approximations of said registered service marks, and from publicly showing on television, in theaters or elsewhere, the motion picture "McCloud: Who Killed Miss U.S.A.?"
- b. Requiring defendants to pay to plaintiff \$1,000,000 in punitive damages for defendants' intentionally and wilfully unlawful conduct and such

compensatory damages as plaintiff has sustained as a consequence of defendants' infringement, trade libel and unfair trade practices, and to account to plaintiff for all profits and gain derived by defendants from said infringement, trade libel and unfair trade practices; and

c. Granting plaintiff reasonable attorneys' fees and such other and further relief as this Court may deem just and proper together with the costs and disbursements of this action.

Dated: New York, New York February 17, 1970

PAUL, WEISS, GOLDBERG, RIFKIND, WHARTON & GARRISON

By s/Simon H. Rifkind
A Member of the Firm
Attorneys for Plaintiff
Office & P.O. Address
345 Park Avenue
New York, New York 10022
(212) 935-8000

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Defendants, National Broadcasting Company,
Inc. and Universal City Studios, Inc., ("NBC" and
"Universal", respectively), by Coudert Brothers, their
attorneys, as and for their answer to the plaintiff's
complaint respectfully allege:

- 1. Deny each and every allegation in paragraph 1 of the complaint except admit that defendants are doing business within the Southern District of New York.
- Deny knowledge or information sufficient to form a belief as to each and every allegation in paragraph 2 of the complaint.
- 3. Deny each and every allegation in paragraph 3 of the complaint except admit:
- (a) That NBC is a Delaware corporation having a principal place of business in the City, County and State of New York, that said defendant owns and operates certain radio and television broadcasting stations, and that certain radio and television

ANSWER

broadcasting stations owned and operated by third parties are contractually affiliated with NBC, and that these radio and television affiliated stations together with the radio and television stations owned and operated by NBC comprise respectively, the NBC Radio Network and the NBC Television Network; and,

- (b) That Universal is a corporation engaged in the production and distribution of motion · pictures for television and theaters.
- 4. Deny knowledge or information sufficient to form a belief as to each and every allegation in paragraph 4 of the complaint, except deny that the names "Miss Universe" and "Miss U.S.A." have gained widespread public recognition as identifying plaintiff's beauty pageants.
- 5. Deny each and every allegation contained in paragraph 5 of the complaint except admit that registrations have been issued for the words "MISS U.S.A." and "MISS UNITED STATES OF AMERICA" on the principal register as alleged.
- 6. Deny each and every allegation in paragraph 6 of the complaint.
 - 7. Deny knowledge or information sufficient

ANSWER

to form a belief as to each and every allegation in paragraphs 7 and 8.

ANSWERING THE FIRST CAUSE OF ACTION

- In response to paragraph 9 of the complaint, defendants repeat and reallege paragraphs
 through 7 of this Answer.
- 9. Deny each and every allegation in paragraph 10 of the complaint except:
- (a) Admit that Universal TV, a division of Universal, produced a motion picture photoplay entitled "McCLOUD: WHO KILLED MISS U.S.A."; and
- (b) Deny knowledge or information sufficient to form a belief as to whether such production occurred at a time unknown to plaintiff.
- 10. Deny each and every allegation in paragraph 11 of the complaint except admit that said motion picture was broadcast over the NBC television Network on February 17, 1970.
- 11. Deny each and every allegation in paragraphs 12 and 13 of the complaint.

ANSWER

ANSWERING THE SECOND CAUSE OF ACTION

- 12. In response to paragraph 14 of the complaint, defendants repeat and reallege paragraphs 1 through 11 of this Answer.
- 13. Deny each and every allegation in paragraphs 15, 16, 17, 18 and 19 of the complaint.

ANSWERING THE THIRD CAUSE OF ACTION

- 14. In response to paragraph 20 of the
 complaint, defendants repeat and reallege paragraphs 1
 through 13 of this Answer.
- 15. Deny each and every allegation in paragraphs 21, 22, 23, and 24 of the complaint.

ANSWERING THE FOURTH CAUSE OF ACTION

- 16. In response to paragraph 25 of the complaint, defendants repeat and reallege paragraphs 1 through 15 of this Answer.
- 17. Deny each and every allegation in paragraphs 26 and 27 of the complaint.

AS AND FOR A FIRST DEFENSE

18. The complaint fails to set forth a claim upon which relief may be granted.

AS AND FOR A SECOND DEFENSE

19. That enforcement of the claim's pleaded would abridge the rights guaranteed defendants by the First Amendment to the United States Constitution.

AS AND FOR A THIRD DEFENSE

an intention of appropriating plaintiff's good will or deceiving or misleading the public, and without an intention of tarnishing plaintiff's reputation, but solely with the intention of describing the content of the motion picture in question.

AS AND FOR A FOURTH DEFENSE

21. In legislating in the field of trademarks, Congress has entered and pre-empted the field
of trademark law in its application to interstate
commerce under authority granted in the commerce
clause of the United States Constitution; therefore,
any state trademark law either at common law or by
statute which enlarges the rights of those engaged
in interstate commerce is unenforceable and without
effect.

- 22. There is no provision in the Federal Lanham Act which is in any way comparable to the dilution provision of Section 368(d) of Article 24 of the New York General Business Law.
- 23. Enforcement of any such state law provision would be in violation of the United States Constitution and Laws.

AS AND FOR A FIFTH DEFENSE

- 24. Defendants' motion picture is sufficiently identified as to source or crigin as to obviate any likelihood of confusion, mistake or deception.
- 25. Were plaintiff to recover in the absence of confusion, mistake or deception, such result would run afoul of the United States Constitution.

AS AND FOR A FIRST PARTIAL DEFENSE

26. Because plaintiff has an adequate remedy at law no equitable relief of any kind or nature may be awarded.

WHEREFORE, defendants, National Broadcasting Company, Inc. and Universal City Studios, Inc. demand judgment dismissing plaintiff's complaint together with costs and disbursements of this action and reasonable attorneys' fees.

Dated: New York, New York March 23, 1970

YOURS, Etc.

COUDERT BROTHERS Attorneys for Defendants

By s/ Carleton G. Eldridge, Jr.

A Member of the Firm
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200 Park Avenue
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UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

EDELSTEIN, D.J.

MEMORANDUM and ORDER

Plaintiff has moved for summary judgment on the first cause of action alleged in its complaint which charges that defendants knowingly and wilfully infringed plaintiff's registered service marks "Miss U.S.A." and "Miss United States of America." The motion must be denied because there exist genuine issues of material fact as to this first cause of action.

Plaintiff is a corporation which is engaged in the business of sponsoring and producing two allegedly well known beauty pageants, one called "Miss Universe" and the other "Miss U.S.A." The charge of infringement derives from Universal's production of and N.B.C.'s broadcast on television of "McCloud: Who Killed Miss U.S.A.," a movie generally concerned with the murder of a beauty contest winner and with the efforts of a western sheriff to bring to justice her killer.

As one of their defenses to the first cause of action defendants claim that their use of the phrases "Miss U.S.A." and "Miss United States" was not a trademark use. That is to say, defendants claim that they used those phrases to refer to refer to a person, a particular beauty contest winner, whereas plaintiff's use refers to the goods and services promoted by its sponsorship of beauty pageants. In what sense defendants used the phrases in question certainly appears to raise genuine triable issues of fact. Also involved here are factual questions concerning whether or not average members of the public could be confused or misled by defendants' use of the phrases in question.

One of the main contentions of the plaintiff seems to be that the defendants acted wilfully, intentionally and with bad faith in producing and broadcasting the "McCloud" movie. Of course defendants deny this, claiming that until the last moment they were ignorant of plaintiff's existence and that even after they became cognizant of plaintiff's claim they conducted themselves in good faith and did not attempt to trade on plaintiff's goodwill. The points and

MEMORANDUM AND ORDER BY EDELSTEIN, J.

counterpoints made by the parties here need not be detailed; suffice it to say that these matters all appear to raise genuine factual issues.

The above does not purport to delimit all of the factual issues which may have to be litigated in connection with plaintiff's first cause of action. It is only intended by this brief analysis to point out the existence of such factual issues which, in turn, require the denial of this motion for summary judgment.

So ordered.

S/ David N. Edelstein
U. S. D. J.

Dated: New York, N.Y. April 21, 1971.

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

This order has been prepared following pre trial conferences of counsel pursuant to Rule 16 FRCP.

- 1. The pleadings are deemed amended in accordance with the framing of the issues as set forth in paragraph "8" hereof.
- 2. The trial shall be based on this order and upon the pleadings, as amended, no issues being abandoned. Counsel for the parties stipulate, with the consent of the Court, that the issues of liability and damages shall be tried separately.
 - 3. (a) The following facts are stipulated:
- (1) Plaintiff is a corporation, duly organized and existing under the laws of the State of California and maintains an office for the conduct of its business at 509 Madison Avenue, City, County and State of New York.
- (2) Defendant National Broadcasting Co., Inc. ("NBC") is a corporation organized and existing under the laws of the State of Delaware,

owns and operates certain television and radio broadcasting stations and that certain radio and television broadcasting stations owned and operated by third parties are contractually affiliated with NBC and that these radio and television affiliated stations together with the radio and television stations owned and operated by NBC comprise respectively, NBC Radio Network and NBC Television Network, and maintains a principal office for the conduct of its business within the City, County and State of New York.

Studios, Inc. ("Universal") is a corporation organized and existing under the laws of the tate of California and is engaged in the production and distribution of motion pictures for television and theatres and maintains a principal office for the conduct of its business with the City and County of Los Angeles, State of California.

(4) Plaintiff is engaged in the business of sponsoring and producing beauty pageants under the names "Miss Universe" and "Miss U.S.A."

Plaintiff has sponsored and produced the "Miss Universe" and "Miss U.S.A." beauty pageants since 1952.

- (5) On May 24, 1966, registrations were issued to the plaintiff for the plaintiff for the words "Miss U.S.A." and "Miss United States of America" on the principal register of the United States Patent Office Nos. 808974 and 808975, respectively, as service marks for promoting the sale of goods and services of others through the medium of a beauty contest conducted on a national and regional basis, in Class 101.
- (6) Since 1952 and continuing to date, plaintiff has annually conducted national beauty pageants for promotional purposes. These pageants result in the annual selection of a national contest winner known as "Miss U.S.A." who is also referred to as "Miss United States of America" or "Miss United States."
- (7) The finals of each Pageant, commencing with the Pageant for the year 1965, have been telecast nationally over the CBS Television Network. The "CBS Television Network" consists of television broadcasting stations owned and operated

by third parties contractually with the Columbia Broadcasting Company ("CBS") and the television broadcasting stations owned and operated by CBS.

- (8) The participants in each
 Miss U.S.A. pageant represent all fifty states and
 the District of Columbia.
- (9) Plaintiff also engages in year round business activities which include promotional activities in connection with the goods and services of other of other sponsors and appearances by the individual who is selected as "Miss U.S.A." on behalf of plaintiff and its sponsors.
- (10) The NBC television network is in competition with the CBS television network which televises the Miss U.S.A. Pageant.
- (11) Universal TV, a division of the defendant Universal (said division and the defendant Universal are referred to collectively, as "Universal"), produced a motion picture photoplay entitled "McCLOUD: WHO KILLED MISS U.S.A." (sometimes referred to as "McCloud").
- (12) The motion picture McCloud was broadcast on the NBC Television Network on

February 17, 1970. McCloud was also rebroadcast at the time and on the television stations and/or networks as follows:

- (i) September 8, 1970 under the title "McCloud".
- (ii) (Additional broadcast dates and changed titles to be furnished by defendants prior to trial).
- (13) In additional to the reference to Miss U.S.A. in the title of McCloud, the following references are made to Miss U.S.A. or Miss United States in the script of McCloud; (references are to line references in script, not pages):

24

72
74
78
86
97
104
113
114 (reference to "Miss Tennessee" at page 42 and "Miss United States at page 43)
153 (reference to "Miss New York")
252

(14) (State facts whether any such references were changed or modified on rebroad-cast, such information to be furnished by defendants prior to trial).

- (15) On January 30, 1970, plaintiff sent telegrams to defendant NBC, objecting to the alleged infringement of its service marks and demanding that all plans for the telecast be suspended.
- (16) On February 2, 1970, plaintiff received a letter by messenger dated the same date, from defendant NBC's Senior Attorney, Alfred Haber, stating that defendant Universal had produced and supplied the motion picture "McCloud: Who Killed Miss U.S.A.?" and that plaintiff's telegram had been forwarded to Universal "for appropriate action."
- (17) The summons and complaint herein were filed on the afternoon of February 17, 1970 and served on defendant NBC prior to the telecast on that date of the McCloud telecast.
- (18) The "Miss U.S.A" Pageant and McCloud's telecasts were broadcast on prime-time television. The phrase "prime time" means broadcast time which will result in the maximum viewing audience.
- (19) Plaintiff is not aware of any reports, correspondence or conversations from unrelated or uninterested third parties suggesting or indicating that plaintiff was in any manner adversely or improperly

depicted or referred to in the McCloud telecast.

Plaintiff has not conducted, directly or indirectly,
any investigation for the purpose of so determining
whether plaintiff was considered so depicted or
referred to by unrelated or uninterested third parties.

- 3. (b) The plaintiff's contentions as to liability are as follows:
- (1) Plaintiff's registrations of its service marks "Miss U.S.A." and "Miss United States of America" were held to be valid and subsisting and in full force and effect by the United States Court of Appeals, Second Circuit, in Miss Universe, Inc. v. Patricelli, 408 F. 2d 506 (2d Cir. 1969).
- (2) Because of plaintiff's long continued and widespread use of the service marks, "Miss U.S.A." and "Miss United States of America" and its extensive promotion and advertising, the public has come to identify those service marks with plaintiff's business.
- (3) Plaintiff's beauty pageants are conducted in accordance with rigidly enforced standards of honesty, public decency and the highest moral principles. The participants in such pageants

are closely watched and attended to, constantly chaperoned and always required to conduct themselves in a manner consistent with the principles of the pageant. The "Miss U.S.A." and "Miss Universe" pageants have always been run strictly in accordance with such principles.

- standards, plaintiff is able successfully to franchise its beauty pageant to local organizations in the various states from which the "Miss U.S.A." contestants are drawn, and to obtain substantial commercial sponsors for its pageant. Such franchise organizations and commercial sponsors insist on plaintiff's enforcement of an exceedingly high moral code and standard of conduct.
- (5) On or about January 30, 1970, plaintiff became aware for the first time, through a news release, dated January 22, 1970, that the defendant NBC was planning to televise a motion picture entitled "McCloud: Who Killed Miss U.S.A.?" on February 17, 1970. Plaintiff had no prior knowledge of the production or filming of the said motion picture and had not given

its consent to the use of its service mark in connection with such production or the proposed telecast.

of telephone calls to Joseph Dubin, Universal's counsel, on February 3 and 4, 1970, before being able to speak with him on February 4th. Plaintiff expressed its concern over the alleged unauthorized use of its service marks and requested an appointment to view the motion picture. Mr. Dubin replied that it was the intention of the defendants to proceed with the scheduled telecast, notwithstanding plaintiff's objections. Notwithstanding plaintiff's request of February 4th, the McCloud telecast was made available for viewing on February 16, 1970, one day prior to the scheduled telecast.

service marks are: (i) valid, subsisting and in full force and effect; (ii) identify the source and origin of plaintiff's services; and (iii) the good will which has attached to these service marks has acquired a secondary meaning.

- "Miss U.S.A. Pageant" and defendants' telecast of
 McCloud are in competition with each other (although
 they have not been broadcast in competing time periods)
 in that both are television programs broadcast over
 national television networks at prime time atcempting
 to obtain the maximum television audience ratings.
- (9) Defendant's use of plaintiff's registered service marks on prime time television constitutes a dilution of the distinctive quality of those marks.
- (10) The claimed use by defendants of the phrases "Miss U.S.A." and "Miss United States" as having reference to a person or to describe content rather than as a trademark use is of no consequence in determining whether such use constituted an infringement of plaintiff's registered servicemarks.
- (11) The fact that plaintiff will present no evidence of actual confusion is of no significance because with identical marks, as are involved herein, and similarity of use on national television networks, there is great likelihood of

confusion of source and in the final analysis the decision must rest on the court's conviction as to possible confusion.

(12) The defendant has the burden of explanation and persuasion of its good faith in the use of plaintiff's service marks in the McCloud production.

(13) The reputation of the plaintiff's beauty pageant has been tarnished by reason of the following facts:

picture McCloud represents plaintiff's "Miss U.S.A."
beauty pageant and its participants in a grossly
false and misleading manner. By depicting the
participants in plaintiff's "Miss U.S.A." pageant
as women of loose morals who are unchaperoned by
plaintiff, by suggesting that said contestants are
lodged in second rate, sleazy accommodations and
that they generally associate with people of questionable morality and character, said motion picture
wrongfully holds plaintiff's business up to public
ridicule and contempt.

- (ii) The statements, implications and innuendos about plaintiff's beauty pageants contained in defendants' motion picture and script are false and defamatory of plaintiff's reputation and standing.
- (14) The acts of the defendants referred to in item (7) in depicting the participants in the "Miss U.S.A." beauty pageant constitute trade libel and business disparagement.
- (15) Defendants' use of plaintiff's service marks on prime time television capitalize upon and reap the benefit of the good will associated with plaintiff's service marks. Said use by defendants constitutes unfair competition.
- (16) Defendants' use of plaintiff's service marks constitute a dilution of such marks within the meaning of Section 368-d of the New York General Business Law.
- (17) Plaintiff's contentions as to damages, with the permission of the Court, will be stated in a subsequent pre-trial order at the the question of damages is to be tried.

- 3. (c) Defendants' contentions as to liability are as follows:
- contractual arrangement with the defendant NBC,
 Universal agreed to produce and furnish NBC several
 World Premiere movies each year. Of these, certain
 movies were produced as pilot films. That is to say,
 it was Universal's hope that NBC would agree to
 purchase a television series based upon the pilot.
 The World Premiere motion picture in question (McCloud)
 was produced as a pilot.
- Stanford Whitmore, a writer it had under contract, to furnish a teleplay concerning the exploits of a Western sheriff, named Sam McCloud, whose responsibilities necessitate his coming to New York. Mr. Whitmore wrote a treatment of some thirty pages which was reviewed, found acceptable, and directed him to use it as the basic format of the teleplay.
- (3) The teleplay furnished by Mr. Whitmore was subsequently rewritten by two of Universal's employees, Richard Levinson and William Link. In final form it concerned a sheriff from

New Mexico, Marshall McCloud, who after capturing a fugitive wanted by the NYC police as a material witness in connection with the appeal of a defendant convicted for murdering a beauty contest winner, was required to deliver his prisoner to the New York City police. At La Guardia airport the fugitive is kidnapped and the ensuing action depicts McCloud's efforts to recapture his prisoner, and his involvement in the merits of the underlying murder. McCloud meets a woman who authored a book on this murder, which was entitled "Who Murdered Miss United States", and together they attempt to clear the original defendant.

- (4) Universal decided that any series based upon the pilot would be entitled "McCloud".

 NBC did in fact agree to purchase the series and six episodes were later broadcast under that title. They are not involved in this lawsuit.
- of selling a series based upon the "McCloud" pilot,
 Universal determined to adopt a different title than
 the proposed series title and decided that the book
 title to which reference has been made, might be
 suitable if employed with McCloud".

- for the World Premiere Program for Universal was requested to have the titles "Who Killed Miss USA" and "Who Killed Miss United States" cleared for possible use. Mr. Benson contacted Joseph S. Dubin, Esq., of Universal's legal department, who in turn requested a title search from Johnson & Tannenbaum, a New York law firm which conducts title searching for the entertainment industry. Johnson & Tannenbaum advised thatboth "Who Killed Miss U.S.A." and "Who Killed Miss U.S.A." and "Who Killed Miss United States" were available for use.
 - "McCloud: Who Killed Miss U.S.A." because the alternative, "Who Killed Miss United States," was too unwieldy.
 - (8) Universal furnished a kit to television editors for the various newspapers and magazines throughout the United States prior to the broadcast of "McCloud: Who Killed Miss U.S.A." It includes a listing of the credits, synopsis of the movie, brief biography of the star performers, their photographs and other material concerning the stars, and the movie in question.

- (9) Defendant's contentions as to damages, with the permission of the Court, will be stated in a subsequent pre-trial order at the time the question of damages is to be tried.
- (10) Upon receipt of the claim that ultimately ripened into this lawsuit, Mr. Dubin, of Universal's legal staff, requested a title search from Johnson & Tannenbaum on the titles "Miss U.S.A." and "Miss United States of America".
- 3. (c) Defendants' contentions as to liability are as follows: (Continued)

As To The Cause of Action For Trademark Infringement

- (1) Defendants' use of the words "McCloud: Who Killed Miss USA" and "Who Murdered Miss United States" in the teleplay do not constitute a use of the plaintiff's trademarks within the meanint of the Trademark Statute. Therefore, there can be no recovery.
- (2) If the contrary be held it is defendants' contention that because the plaintiff seeks damages only, the issue of an injunction being moot, it must prove that confusion has <u>actually</u> occurred and that it has <u>actually</u> been damaged.

- (3) If it be held that plaintiff need not prove actual confusion and actual injury, but need only prove the likelihood of confusion, it is the defendants' contention that likelihood of confusion can not be established because:
 - (i) There is no similarity
 between the plaintiff's
 marks and the title of
 the defendants' program
 and the title of the book
 referred to therein;
 - (ii) There is an absence of similarity between the services rendered by the plaintiff and those rendered by the defendants;
 - (iii) There is no relationship
 between the area and
 manner of use of the
 plaintiff's marks and
 the area and manner of
 use of defendant's teleplay;

- (iv) The sophistication of the general public is such that it would not assume that the defendants' teleplay is connected with, sponsored by or originates from the plaintiff. The source of the teleplay is distinctly noted.
 - (v) The plaintiff's marks are, within the meaning of the trademark law, weak marks and hence can not be protected beyond the precise use made of them by the plaintiff;
- (vi) There has been no actual
 confusion;
- (vii) The defendants used their titles in absolute good faith.
- (4) Should the plaintiff succeed on its case, which require that it prevail on all issues

heretofore raised in these contentions, the defendant, by way of defense, will urge that a judgment in the plaintiff's favor will contravene the First Amendment to the Constitution in that the public will be effectively proscribed from utilizing a beauty pageant setting for novels, motion pictures, etc.

As To The Cause of Action In Trade Libel

- (1) The matter published is not "of and concerning" the plaintiff.
- (2) If the matter published is "of and concerning the plaintiff" in the teleplay, it is not libelous in any event.
- (3) Trade libel is only actionable if special damages have been pleaded. No such damages have been alleged. Hence the Second Cause of Action should be dismissed.

As To Third Cause of Action, Unfair Competition

(1) The defendants reallege all contentions appropriate to the First Cause of Action, trademark infringement.

- (2) The defendants have appropriated nothing in which the plaintiff can claim a proprietary right.
- (3) The defendants have not otherwise unfairly competed with the plaintiff.

As to Fourth Cause of Action --Dilution of Trademark

- (1) Defendants reallege all contentions raised in opposing the First and Third Cause of Action. We do this because all courts construing the statute upon which plaintiff relies insist that all elements appropriate to an action in trademark infringement and unfair competition be proved before dilution may be found.
- (2) Were this court to grant relief on this cause of action absent proof of trademark infringement and unfair competition, it would unconstitutionally extend rights granted under the trademark and copyright laws.

4. (a) Plaintiff expects to offer the exhibits enumerated below:

No.	Description
1	Certified copy of service mark "Miss U.S.A" No. 808,974
2	Certified copy of service mark "Miss United States of America" No. 808,975
3	NBC News Release dated January 22, 1970
4(a)	Copy of Telegram from plaintiff, addressed to Mr. Don Durgin, President NBC Television Network
4 (b)	Copy of Telegram from plaintiff, addressed to Mr. Julian Goodman, President of NBC, Inc.
4 (c)	Copy of Telegram from plaintiff, addressed to Mr. Mort Werner, Vice President NBC Television
5	Letter dated February 2, 1970, from Alfred Huber, Senior Attorney for NBC addressed to plaintiff.

4. (b) Defendants expect to offer exhibits enumerated below:

No.	Description
1	Script of McCloud
2	Film Print or Tape of the movie McCloud for viewing
3	(to be supplied)

4. (c) The parties stipulate as to the authenticity of all the foregoing exhibits and that they, with the approval of the Court, be admitted into evidence.

Should either party subsequently decide to produce additional exhibits, notice thereof shall be given before trial.

The parties reserve the right, at the time of trial, to object to any exhibit offered into evidence on the ground of relevancy.

- 5. (a) Plaintiff expects to produce the following witnesses:
 - (i) Harold L. Glasser, President of Plaintiff.
- 5. (b) Defendants expect to produce the following witnesses:
 - (i) George Santoro, Vice President of Defendant Universal.

Should either party subsequently decide to produce additional witnesses, notice thereof shall be given before trial.

6. The claims for damages and other relief asserted by the plaintiff will, with the approval of

the Court, be set forth in the pre-trial order at the time the question of damages is to be tried.

- 7. The parties also agreed on the following matters:
 - (a) Best estimate of time to try case:
- (1) Plaintiff anticipates that it will require one (1) day.
- (2) Defendants anticipate that they will require one (1) day.
- (b) (1) At the time of trial, plaintiff shall submit to the Court certified copies of its registered service marks "Miss U.S.A." and "Miss United States" as prima facie evidence of plaintiff's rights to the exclusive use of such service marks in accordance with Sec. 33a of the Trademark Act of 1946, as amended, 15 U.S.C. 1115a.
- (2) The defendants shall make available at the time of trial for viewing by the counsel, the parties and witnesses a true copy of the McCloud photoplay production as the same was televised on February 17, 1970.
- (3) At the time of trial the defendants shall submit to the Court a true copy

of the McCloud script of the February 17, 1970 television production.

- 8. The issues to be tried are formulated by the Court with the consent of the parties as follows:
- (a) Did the use by defendants of the words "Miss U.S.A." and "Miss United States" in the McCloud title, script, advertising and promotions related thereto constitute an infringement of plaintiff's registered service marks "Miss U.S.A." and "Miss United States."
- (b) Did the use by defendants of the said words "Miss U.S.A." and "Miss Universe" in the McCloud title, script, advertising and promotion related thereto, constitute a dilution of the said service marks of the plaintiff within the meaning of Section 368-d of the New York General Business Law?
- (c) Did the use by defendants of the words "Miss U.S.A." and "Miss United States" in the McCloud title, script, advertising and promotions related thereto constitute trade libel and/or business disparagement against the plaintiff?

(d) Did the use by defendants of the words "Miss U.S.A." and "Miss Universe" in the McCloud title, script, advertising and promotions related thereto, constitute unfair competition against the plaintiff."

MYRON KOVE, ESQ.
Counsel for Plaintiff

S/ COUDERT BROTHERS, ESQS. Counsel for Defendants

SO ORDERED

s/ U.S.D.J.

Dated: New York, New York June 25, 1973

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1	UNITED STATES DISTRICT COURT	
2	SOUTHERN DISTRICT OF NEW YORK	
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4	MISS UNIVERSE, INC.	
5	Plaintiff,	
6	vs.	70 Civ. 657
7	NATIONAL BROADCASTING CO., INC. :	
8	and UNIVERSAL CITY STUDIOS, INC. :	
9	Defendants. :	
10	X	
11		March 13, 1974 11:10 a.m.
12	Before: HON. WHITMAN KNAPP,	
	District Judge	
13		
13		
14	APPEARANCES	
14 15	APPEARANCES	
14 15 16	APPEARANCES MYRON KOVE, ESQ.	
14 15 16 17		
14 15 16	MYRON KOVE, ESQ.	
14 15 16 17	MYRON KOVE, ESQ. Attorney for plaintiff.	
14 15 16 17 18	MYRON KOVE, ESQ. Attorney for plaintiff. COUDERT BROTHERS,	
14 15 16 17 18 19	MYRON KOVE, ESQ. Attorney for plaintiff. COUDERT BROTHERS, Attorney for Defendant.	
14 15 16 17 18 19 20	MYRON KOVE, ESQ. Attorney for plaintiff. COUDERT BROTHERS,	
14 15 16 17 18 19 20 21	MYRON KOVE, ESQ. Attorney for plaintiff. COUDERT BROTHERS, Attorney for Defendant. BY: GORDON T. KING, ESQ.	
14 15 16 17 18 19 20 21 22	MYRON KOVE, ESQ. Attorney for plaintiff. COUDERT BROTHERS, Attorney for Defendant. BY: GORDON T. KING, ESQ.	

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THE COURT: We will show the film now.

(Film shown.)

MR. KOVE: Your Honor, may I make a statement for the record in connection with the viewing of the film. Let the record show that the Court and the parties have viewed the 15 minutes film presented by the plaintiff entitled the 1969 Miss U.S.A. Beauty Pageant.

Your honor, at this time I would also like to introduce the exhibits, some of which are already provided for in the pretrial order. Plaintiff's Exhibit 1, which is a certified copy of the Miss U.S.A. trademark, number 80897t, registered in the U.S. Patent Office.

THE COURT: I take it there is no objection?

MR. KING: No, your Honor. There is no objection to any of these.

MR. KOVE: Number 2 is the plaintiff's registration for the service mark, Miss United States of America, 858975 registered in the United States Patent Office. This is also a certified copy.

(Plaintiff's Exhibits 1 and 2 were received in evidence.)

MR. KOVE: Item number 3 is a release from N.B.C. Television News dated January 22, 1970. There is no objection to that.

THE COURT: It is a news release?

MR. KOVE: Yes, sir.

(Plaintiff's Exhibit 3 was received in evidence.)

MR. KOVE: Plaintiff's Exhibit 4 is a series of three telegrams from the plaintiff to the various people at N.B.C. and this is also covered by the pretrial order and I don't think the defendant has any objection to that.

THE COURT: Received.

(Plaintiff's Exhibit # was received in evidence.)

MR. KOVE: Plaintiff's Exhibit 5 is a letter dated February 2, 1970 from National Broadcasting Company addressed to the plaintiff. This is also covered by the pretrial order and I don't think the defendant has any objection.

MR. KING: That's correct, your Honor.

THE COURT: Received.

(Plaintiff's Exhibit 5 was received in evidence.)

MR. KOVE: Item number 6 is the plaintiff's official entry from, or a draft of the official entry form for
1969, to compete for the Miss U.S.A. - Miss Universe titles.
This item is not covered by the pretrial order but I do not
think the defendant has any objection to it, subject of course,
to connection, Your Honor.

MR. KING: I would like to read it. Do we have to mark this now?

1	eljt Parkinson-direct 4
2	MR. KOVE: All right. Your Honor, I will withdraw
3	item number 6 until counsel has had a chance to read it.
4	Your Honor, the balance of our exhibits will be
5	introduced when the witnesses testify.
6	THE COURT: All right.
7	MR. KOVE: Your Honor, I'd like to call as our
8	first witness, Mr. Robert Parkinson.
9	ROBERT E. PARKINSON, having been called as a
10	witness on behalf of the plaintiff, was duly sworn and
11	testified as follows:
12	MR. KOVE: Your Honor, Mr. Parkinson, we will have
13	to recall to continue his cross examination after we see the
14	McCloud film.
15	DIRECT EXAMINATION
16	BY MR. KOVE:
17	Q Mr. Parkinson, what is your relationship with the
18	plaintiff, Miss Universe Inc.?
19	A I am the vice president and executive director.
20	Q How long have you been in that position?

tiff?

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A I was previously associated in 1967 through 1971.

And then I returned in August of this year, after being away

In that particular position, since August 13, 1973

How long have you been associated with the plain-

for a couple of years.

- Q From the time that you left in eary '71, was that?
- A Yes.
- Q Until you returned you were not associated with the plaintiff?

A Indirectly I was associated because I did produce television shows and also served as a counsellor and advisor to a number of pageants that were affiliated at the state and local level with Miss Universe Inc.

- Q But you were not an employee during that period of time?
 - A I was not, no.
 - Q What are your present duties with Miss Universe?
- A My present responsibilities are to handle the entire operation of both the Miss U.S.A. and Miss Universe pageants and oversee the day to day activities.
- Q Prior to 1971, before you left Miss Universe, from the time that you had originally been hired, what were your functions during that time?
 - A I was the field director for Miss Universe.
 - Q What are the duties of the field director?
- A Well, the field director is the direct assistant to the executive director. This is only one field director, and his responsibilities are to police and generally oversee

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all the states, pageants in the Miss U.S.A. pageants, which are 50 plus the District of Columbia, and to oversee the international pageant, the roughly 70 countries that participate in the Miss Universe pageant.

In addition to that, whatever assignments are given to the general director in other areas.

Q I will get back to the state franchises in a moment. Prior to your association with Miss Universe, when was that, in '67?

A In 1967, that's correct.

Q What experience did you have prior to that time in the beauty pageant field?

A In the beauty pageant field I started when I was 17 years of age. I was a senior in high school in Ohio. I was identified and worked with the Miss Ohio pageant, which was a preliminary to Miss America.

Obviously, I had duties which would normally be assigned to a 17 year-old, which were carrying chairs, and helping as a committee member at the very low levels of the pageant.

All during my entire life, there's never been a year gone by that I have not had some affiliation with or participated in pageants of some sort, for a number of different organizations, often on a volunteer basis, not a salaried

You'd have to explain that.

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- Q Do you enter into a franchise with a particular organization ---
 - A Yes, we do.
 - Q --- to operate a pageant; is that correct?
 - A Yes, that's correct.
- Exhibit 7 for identification entitled an exclusive franchise for conducting a state competition in the 1969 Miss Universe beauty pageant for the title Miss U.S.A. and Miss Universe.

 (Handing.) Is this the form of agreement that you would have a local franchisee execute to conduct a local beauty pageant?

A Yes, we would execute 50 of these a year in a Miss U.S.A. beauty pageant.

Q Would the franchisees from time to time, or it may vary from state to state, would they pay you a fee for conducting that local pageant?

A That's correct.

Q Were they responsible for operating and running the local pageant?

A Within the framework of our rules and regulations.

THE COURT: They pay you for the privilege of running local pageants?

THE WITNESS: That is correct.

Q What was the framework of your local rules and

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conditions?

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A It's more or less spelled out in the agreement here. We have very specific rules and regulations. For example, the actual form that the pageant takes, the competitive

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ample, the actual form that the pageant takes, the competitive areas, the age categories, the general rules.

For example, a girl can never be married; she can never have been married.

Is there an age limit?

A Yes, 18 to 28.

Q In other words, this exclusive franchise agreement, plaintiff's Exhibit 7, set forth the terms and conditions under which the franchisee would conduct the pageant?

A That's right. It set forth those terms and it outlined how they are to operate their pageant and what they are supposed to do. And then we expand upon it after they agree to it in general.

After you sign an agreement, a franchise agreement with a local franchisee, what procedures are then followed, from your point of view?

A Well, the first thing that happens is that the party signs the agreement and becomes our, what we refer to as our state director or franchise holder in the state of Ohio.

At that point, a handbook of operations goes to that director, and then on a regular basis he received advice

from our office. There is a regular monthly newsletter which goes to him and we issue, I would say, probably for example, in 1968 or '69 we probably issues three or four specific bulletins a month directing the franchise holders or directors in general areas of the operation.

Q Is there a special procedure under which the franchisee conducts the pageant leading to the selection of say, Miss Ohio?

A Yes, there is.

Q What is that procedure?

A Well, he has the rights, what he acquires for really a token fee, is the rights to the geographic area of the state of Ohio. He can then have cities conduct local pageants, which is what he's done.

You have a Miss Columbus, a Miss Cleveland, a
Miss Dayton. Those pageants fall into the area of what we call
local pageants, which are preliminary to the state elimination.

In that context he has to follow the rules and regulations of the pageant. He must judge them all in the same fashion down to the smallest city and up to the national.

Q And you from time to time furnish standards and guides?

A Oh, absolutely. We furnish, in fact, the ballots on which their judges must vote, and those ballots must come

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back to us certified, notarized that they have been signed by the individual judge who was there. And in fact those are the procedures that were followed.

Q And then when the local pageant is completed, and say Miss Ohio is selected, what happens at that point?

A She then becomes, if all of the documentation concerning her is acceptable to our office, she then becomes Miss Ohio as far as our pageant is concerned and she is a contestant for the title of Miss United States, Miss U.S.A.

MR. KOVE: Your Honor, I would like to introduce plaintiff's Exhibit 7, the exclusive franchise agreement.

Do you have a copy?

MR. KING: I have one. (Pause.)

THE COURT: Plaintiff's Exhibit 7 is received.

(Plaintiff's Exhibit 7 was received in evidence.)

Q When the local beauty contestant for the particular state, say, Miss Ohio, is selected and certified to you, do you have her execute or sign any kind of an agreement in connection with her duties during the pageant and for the Miss Universe?

A Yes. After we receive certification of her being the proper age, and all the other papers which we have to receive, the judges' certificate, and so forth, we then ask her to sign what we call the official entry form.

Q I show you plaintiff's Exhibit 6 for identification entitled --- this is a draft entitled official entry form, 1969
Miss Universe Beauty Pageant, to compete for the titles Miss
U.S.A. and Miss Universe.

Was this the form of agreement which was used in 1969 for girls who were selected by their state to participate in the Miss U.S.A. Beauty Pageant?

A Yes. Each of the 51 girls would have to sign this contract.

Q What was your purpose in having the girls sign this form?

MR. KING: Your Honor, could we just have a couple of minutes? Apparently the projectionist is on the phone and there is a message.

THE COURT: All right.

(Pause.)

THE COURT: The question is, what was the purpose in having them sign that?

A It outlines in detail the rules and regulations as a matter of fact, it says that right on the front of it, to which these young ladies will be expected to comply during the pageant and afterward if they should become ---

Q Were there certain standards that you wanted the girls to follow by having them execute that form?

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A Well, absolutely. There are statements in here, I could refer to one ---

Go on and do that.

For example, "That I will be --- I understand C that I will be chaperoned during my entire stay in the host city."

So we don't have any debate ever about whether or not there is someone accompanying the young ladies at all times which is a posture that we have always had and we always will have.

Is there anything else of significance in there Q that you want to make known to the young girl?

A She is making a statement again which has to be documented, that she is within the proper age categories, also that she is not married, never has been; that she is of good health, good moral character, and so forth; that she's never been a contestant in the other pageants; that she's been a resident of her state --- I could go on and on.

THE COURT: It is in evidence.

Does this form of agreement also provide for her employment and her prizes in the event she is selected as Miss U.S.A.?

> That's correct. A

This is a form that you have every girl prior to 0

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MR. KING: No objection.

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Actually signed by the individuals.

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2	0 Mr. Parkinson, during the 1969 beauty pageant
3	what was your function in connection with that pageant?
	A As I say, I was field director of the pageant

A As I say, I was field director of the pageant. I would have had other assignments given to me by the executive director of the pageant.

Can you describe for us the arrangements that were made for the 51 beauty participants from the time that they are selected and are certified to you as their state winner, until the time that the beauty pageant is completed?

A Yes.

At the time they arrived in Miami Beach, Florida.

The pageant is usually, the actual pageant, is called a week, but it actually extends to usually nine or ten days because the young ladies arrive on a Thursday ---

When was the opening day of the 1969 pageant?

A If I remember correctly, I think it was around the 18th of May, which would have been the Sunday night if the opening ceremonies were conducted. But they would have arrived a couple of days before that.

Q When the girls arrive, who meets them at the airport?

- A They are met by the hostess chaperone.
- Q How are the hostess chaperones selected?
- A There is a board of governors that is representa-

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tive of the city, in this case it was the city of Miami Beach, City of Miami, and metropolitan Dade County. 3

They may have a board of governors in conjunction with us, one of which is the hostess chaperone committee, because they are our direct link with the girls between the television and our own operation.

How are the hostesses actually selected?

They are actually selected by ourselves and by the chairman of the hostess chaperone committee.

May I make a point about 1969? The pageant had already been in Miami Beach at that time for I believe it was nine years. I think that would have been the ninth year. And the point is, that you would have been then working with hostess chaperones who probably, many of whom, a large percentage of whom, would have been working with the pageant since 1960, having done two pageants each year, or roughly 18 pageants.

> Q When you say two pageants ---

A Miss U.S.A. and a Miss Universe, which would be A separated.

In other words, most of your chaperones were probably chaperones from a prior year and had already had experience?

I would say a large percentage of them were, sure. Because they enjoyed it and came back. I would say 85 percent

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2 of them were.

> When the girls arrived at the airport, their chaperone would meet with them at that time?

> > Yes. May I explain the chaperone system?

Yes. Q

The hostesses are assigned. One hostess, chaperone --- it's the same to us --- are assigned to every two girls. There was a master board in our control room at Miami Beach Auditorium which had all the flight arrivals and the hostesses for Miss Montana and Miss Arkansas, the hostess would go to the airport and coordinate the arrival. She'd pick up Miss Arkansas and Miss Montana, and from that point on until they put them back on the airline, the three of them were a team.

When you say a team, you mean both girls were continually chaperoned by one of those hostesses?

> Possibly ---A

> > MR. KING: I object to the form of the question.

Withdrawn. You stated that the chaperone met the girl at the airport or the two girls ---

Each chaperone has a car which was assigned to her by us. It was one of the cars you saw in the film. And the two girls and the chaperone are in that car. They move all week long in that car. They are assigned to a hotel. Let's take the Fountainbleu for example, or the Carriage House. And they have a room where the three of them stay. Two girls

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and the hostess chaperone.

- Q In other words, the two participants and the chaperone stay in the same room?
 - A Yes.
 - Q Throughout their entire stay in Miami Beach?
- A Yes.
 - Q Do the girls ever have any free time?
 - A They have free time, yes.
 - Q Are they permitted to go out on their own on their free time?
 - A No. Absolutely not.
 - Q Are they chaperoned during this free time?
 - A The chaperone who is assigned to them is always with them. If they go to the beach, for example, they go down to the beach together.

THE COURT: Free time but not free from each other, those three have to stay together.

THE WITNESS: Yes, those three have to stay together.

Q What, say, if two girls with two different chaperones wanted to go to the beach together, and two other girls wanted to go someplace else; would that present a problem?

A It presents a problem because we discourage it, but I will not say that it never happens. What can occur is

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that the hostesses say, one of my girls and one of your girls wants to go to the pool, and the other girl says one of my girls and one of your girls wants to go shopping. So they will juxtapose. We don't care for that, but it can occur.

Q If something like that happens, is each of those two girls still accompanied by a chaperone?

Absolutely.

Is your testimony then that during this entire stay in the Miami pageant week, they are entirely chaperoned?

A In our instructions to the girls, they are told that it is ground for disqualification from the pageant if they are found anyplace without a chaperone.

Let me cover with you some of the things that the girls do during the so-called pageant week, as we saw partially in the film.

After their arrival, can you generally tell us how their time is divided up?

Sure.

Their activities after their arrival?

Tell me how much detail you want me to go into and I will stop if I am going into too much.

What they arrive, on a Thursday, roughly would be ten days ahead of when the actual pageant occurs. They will have an orientation meeting that Thursday evening, which is the 2 one

one I was just alluding to a moment ago at which time all of the additional rules and regulations and what we expect from them are very carefully outlined. Prior to this they have already been outlined to the hostess chaperones which I also alluded to before, because they are our liason between ourselves and the girls.

They continually communicate the rules to the girls as the week goes on. But the orientation meeting is a showing of last years pageant by way of film as we are going to see, and the discussion of the rules, regulations and what's going to happen during the week.

On Friday ---

THE COURT: I take it this is not a swinging organization.

MR. KOVE: That is the purpose of our testimony, your Honor.

A The next day would be a motorcade or parade or event of that type. During the day, remember, you are talking about ten days later - or nine days later - producing a 90 minute or two hour live television special with basically 51 amateurs. These are college kids.

So during the day you are spending a lot of time rehearsing songs, going over material that will be used in the show, blocking, and that kind of thing.

Q How many days are rehearsals involved?

A Well, you have seven, I would say, is a fair estimate.

Q In other words, there are approximately ten days, of which seven are devoted to rehearsals.

A I'd say so. Because making the gown, this may be a morning, like Saturday morning would be a press and photography morning, so you are only rehearsing half a day on Saturday. Sunday morning they go to churches of their choice. They are chaperoned to these various churches that they want to go to. So you lose Sunday morning.

By the time you total it all you are talking about seven days of rehearsal.

Q And the balance of the time is devoted to public relations work such as the type we have seen in the film?

A It's partly that, yes. For example, you have two nights. You take half of the contestants on one evening and they meet with a panel of judges for what we call personality judging, which is across the table discussion of things they are interested in. So that takes up two nights of activity.

Three nights are taken up with actual shows. One is the telecast. One is a preliminary competition, and one is an opening ceremony. One will be taken up with orientation meetings. One will be taken up with parades. Another is what

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we call restaurant night, at which time we take the kids to different restaurants in the areas so they can get a little feeling for what's happening in this city.

Another night we do a charity bowling tournament in which we donate the money, say, to United Fund, or something

Q All of these activities are covered by newspapers or news reporters?

A Yes, they are.

Q They are all part of your public relations in connection with the actual event that Saturday night?

A They are all part of what we call the pageant activity.

Q After the pageant is held Saturday night on the television, after that is concluded, what happens then?

A After the pageant is concluded on Saturday night?

Q Yes. After the Saturday night telecast.

A Directly afterwards there is a coronation reception for the new Miss U.S.A.

Q Following the telecast?

A Yes, following the telecast.

THE COURT: That is not on television?

THE WITNESS: No, that would be at midnight, as soon as it's over. In 1969 it was held at Miami Beach Auditorium. They have a recention room there. It's a very private

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thing for the executives of Miami Beach, the mayor, the governor, and those kind of people, of Florida. That is a reception

Then, the next morning, of course, Miss U.S.A. has press conferences, and so forth, because the press is interested in her views and things.

Sunday evening is what we call the coronation ball which is another charity event. And the girls attend the coronation ball and they depart on Monday.

- Q The coronation ball, who sponsors that?
- A Well, various and sundry sponsors. It would depend on which year you were talking about. It may be sponsored by Cerebral Palsy, it may be sponsored by Fight for Sight.
 - Q Do you recall who the sponsor was in 1969?
 - A Yes. Muscular Dystrophy.
- Q Saturday you have the telecast show. Saturday night late you have the --- what was that?
- A We call it a coronation reception. It's a very brief hour and a half type party because it's getting late and everybody is tired.
 - O Then the next day you have the coronation ball?
 - A Yes.
- Q What happens after the coronation ball? You said the girls depart on Monday.
 - A All right. The girls depart on Monday. They still,

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of course, are accompanied by their hostess chaperone as she is responsible for taking them back to the airport, putting them back on the airplane.

One thing I skipped that maybe I should mention, it might be relevant. On Sunday, they go through what we call an out processing. They must come to us and they must certify that they have received all of the prizes that are due them. For example, if a girl is runner-up, she gets certain awards and we have to have certification that we have presented those awards to her, that in fact she got everything that we said we were going to give her, so that there is no question later of, well, I didn't get my savings bond, or this or that.

All the girls go through that.

We check them all out. Then on Monday, when the ladies take the --- when the chaperones take the contestants back to the airport, they then must come back and report back to us that both the girls, both of their girls are on the airplane, on the flights that they were assigned to, and that they are on their way home. Because that is part of the agreement that they signed, that they will return within 24 hours of the end of the pageant.

Q That is in that official entry form that you referred to?

A It is in both that and I believe also in the

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franchise agreement.

Q Is it your testimony, then, that from the time the girl arrived in Miami Beach at the start of the pageant week, until she is returned on the airplane, thatduring that period of time, number one, she is fully chaperoned?

A She is ---

MR. KING: I object to the form of the question.

Q I will withdraw the question.

A Could I explain anything about the security system which might ---

MR. KING: I would object to him just volunteering

Q I will ask the questions.

In addition to the chaperones that you have described, is there any other kind of security system which you have in connection with protecting the girls?

A In Miami Beach, for example, we have three uniformed policemen who accompany the girls at all times, assigned by Miami Beach Police Department. They were in the company of the young ladies at all times.

When a party splits off, for example, on a restaurant night, we would have six restaurants involved, they would assign a uniformed officer to each of those groups going in six different directions.

In addition to that, the hotels add security

a problem.

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because we went through a rather sophisticated procedure with reference to where you house the young lady in the hotel. We go through which floor is the best floor for them to be on, which is the least accessible to someone who might want to cause

Then the hotels, for example, at the Fountainbleu they have uniformed security men and they were actually stationed in the hallway during the entire pageant.

Would it be possible for a girl to avoid the chaperones and try to get away on her own to do what she might have wanted personally?

It would be possible for her to try. I don't know A how she could do it. I don't know how she could achieve it.

Did you have any experiences, say, in the 1969 pageant, to your knowledge, where that may have happened?

> No. A

THE COURT: What about during the ball? Are they chaperoned during the ball?

THE WITNESS: Yes.

THE COURT: When she is dancing on the ballroom

floor ---

THE WITNESS: The chaperone is at the table.

The girl is constantly chaperoned during her stay in Miami Beach; is that correct?

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A Yes.

MR. KING: I object to the form of the question.

THE COURT: That is a conclusion.

MR. KOVE: I will withdraw the question.

Q To your knowledge, how long has the Miss U.S.A. beauty pageant been in effect?

A lt's in its 23rd year.

Q It started when, approximately what year?

A About 1952.

THE COURT: Wasn't there one before that?

MR. KOVE: This is Miss U.S.A., your Honor.

THE COURT: Wasn't there one in Atlantic City?

MR. KOVE: That is Miss America, a competitor,

your Honor.

THE COURT: I see.

Is that still going on?

MR. KOVE: Yes, your Honor.

When did the pageant start its production on television?

A 1965.

() What television network does it appear on?

A CBS Television.

Q Who is the sponsor that runs the program?

A The sponsor is the Proctor and Gamble Company,

the world's largest advertiser.

beauty pageant?

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Yes, she always is. A

Do they pay you a fee for putting on the Miss U.S.A.

Yes, they do.

THE COURT: Is the income from the Miss U.S.A. pageant primarily Proctor and Gamble?

THE WITNESS: I wouldn't say primarily, but it's partly, in large part, based upon Proctor and Gamble income.

Is it more than 50 percent from Proctor and Gamble do you know?

I don't know, but we have a lot of income from other areas. We license the trademark, Miss U.S.A. and Miss Universe, in various areas, and we have income from the franchises, from the fees that we receive from that.

We have income from personal appearances; both Miss U.S.A. and Miss Universe travel constantly.

With respect to Miss U.S.A., how do you derive income from her personal appearances? How does that work?

We charge a fee for Miss U.S.A. to make an appearance for a commercial organization, to appear in a parade, or a television show, or to appear anywhere.

When she makes these appearances, is she accompa-

nied by a chaperone?

THE COURT: Does she get a part of the fee?

THE WITNESS: She is paid a personal appearance contract. That is part of the arrangement.

- Q The personal appearance contract, is that covered in the official entry form that you referred to before?
 - A Yes, it is.
- O That I believe is marked Plaintiff's Exhibit 6.

 In 1969, what was the prize and personal appearance contract?

A In 1969 it was \$5,000 for winning the title; \$5,000 for personal appearance contract in addition to which she receives a home for the year and she receives all of her expenses. Everything that she spends is paid by us, plus all the other things, clothing, coats, whatever.

THE COURT: She doesn't get a fee for each personal appearance, she gets \$5,000 flat?

THE WITNESS: That's correct. That is what she got then.

THE COURT: Then has to make appearances as requested?

THE WITNESS: That's correct.

- Q After the 1969 pageant where was it, the 1970 pageant held?
 - A 1970 was also held in Miami Beach, Florida.

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And in 1971 - 1972? Q

1971 was in Miami Beach Florida. 1972 was in A San Juan, Puerto Rico, I believe. I was not there in '72.

That was the Miss U.S.A.?

Yes. A

The 1972 Miss U.S.A., where was that held?

In New York City.

During the time that the girls were attending the Miss U.S.A. pageant here in New York City, what hotels did they stay at?

During the 1973 Miss U.S.A. pageant they stayed at the Americana Hotel.

In 1969 when the Miss U.S.A. pageant was shown on CBS Television, did you have any reports made by any rating services as to the audience participation or viewing?

Yes. Miss Universe by Leo Burnett, which is the agency which Proctor and Gamble had.

Did they give you a report on what the ratings were in 1969?

Yes.

Do you have an objection? Q

MR. KING: I think I know where he is going. I am pretty sure I am going to have a hearsay objection.

MR. KOVE: I understand that there will be a

Parkinson-direct eljt 1 hearsay objection, your Honor, but may I finish the question? 2 THE COURT: Finish the question. 3 What was the report that you received for 1969? Q MR. KING: There is where the objection is. 5 THE COURT: I assume you can get around it by 6 showing us, so I will allow it. 7 MR. KOVE: Actually, on cross examination I will 8 ask the defendant's witness the same question. Their rating 9 was even better than the Miss U.S.A. Not that that is any ob-10 jection. 11 THE COURT: I will allow the question. 12 Did you receive a report as to your television 13 0 14 rating for 1969? Yes, 15 Do you have that report with you? 16 Q It's in those manuals, if I could have them. 17 A Who furnished you with the report? Q 18 This report would undoubtedly have been furnished 19

> They are the agency for whom? Q

For Proctor and Gamble. A.

to us by Leo Burnett Advertising Agency.

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Who did they retain to make the rating? Q

The Nielsen Company. A

What rating did they give you for the Miss U.S.A. Q

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2 beauty pageant in 1969?

A A rating of 26.3 share of audience.

Q What does that 26.3 mean?

A The 26.3 is the total percentage of people in the United States who would be watching that show, or roughly one in four.

Q In other words, one in four people in the United States would be watching the show at that time?

A Right.

Q In addition to the rating did they give you any other information as to the market share?

A Yes, they break the share down.

Q What was your share for 1959?

A The share for 1939, Miss U.S.A., was 49.0.

Q What does that mean?

A The share is in relation to the total number of people watching television at that moment. In other words, one out of two that had their television on was watching this show.

THE COURT: One out of every four was watching you in the United States.

THE WITNESS: Yes, out of the total population of the United States, disregarding whether the sets were on or not.

That is the total percentage of people, 26 percent.

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2	THE COURT: In other words, half of the whole
3	United States is watching television at a given period of time.
4	That is a powerful influence.
5	MR. KOVE: It is, your Honor. But I think his
6	testimony is one in four was watching this particular show.
7	THE COURT: One in two were watching television
8	altogether. That sounds awful.
9	MR. KOVE: Your Honor, it may be that the witness'
10	interpretation of share and rating may not be correct. I will
11	put another witnesson. It's actually the third point that I
12	want to get to.
13	Q What is the third aspect of that report?
14	A The third aspect is the total number of homes.
15	Q Watching the program?
16	A Yes.
17	Q What was that report?
18	A 14,900,000.
19	Q Homes were watching the Miss U.S.A. beauty pageant
20	A Yes.
21	Q Is this typical of the number of homes watching
22	it over the years?
23	A Yes. It's increasing each year.

Q Each year it increases?

A Yes.

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For example, 1970, which was in front of me here was 16 million. So it went up.

Q In your experience in connection with beauty pageants over the last 19 years, have you ever participated in a beauty pageant where the girls were not chaperoned?

A I have never, no.

Q Do you know of any beauty pareants where the girls were not chaperoned?

THE COURT: You mean his own beauty pageant?

MR. KOVE: From his knowledge.

THE COURT: All the beauty pageants?

MR. KOVE: No, that he has participated in, your

Honor.

A I don't know of any that operate without chaperones.

MR. KOVE: Your Honor, I would like to finish this
portion of the direct now and then continue.

THE COURT: You can reserve anything you think that is necessary.

MR. KOVE: There is one more thing I must bring in, on the film that he made.

- Q On the film that we saw on the opening of the trial, when was that film prepared?
 - A In 1969, after the Miss U.S.A. pageant.
 - Q Was it prepared immediately following the pageant?

- A Yes, immediately following the pageant.
- Q Did you participate in the preparation of that film?
- A Not in the actual preparation, but in the shooting of it, yes.
- Q What was your connection with the final print of the film? Did you approve it?
- A Yes, I approved it and assisted in editing it and working on the copy, and so forth.
- Q How long after the ending of the pageant in May of 1969? When did the May 1969 pageant end, Miss U.S.A.?
 - A I believe the telecast was on the 24th of May.
- Q How long after the conclusion of the telecast was the print completed?
- A I don't recall exactly, but it would have been certainly within six weeks.
 - Q Certainly prior to February of 1970?
- A Oh, certainly. We would have had it in August, at the very latest.
 - Q What do you usually do with this film?
- A The film is used as a sales aid, a promotion aid.

 At that time it was being distributed also by the Florida development commission to television stations throughout the country as a promotional film for use by television stations.

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Q I show you plaintiff's Exhibit 8, entitled the 18th Annual Miss U.S.A. Beauty Pageant, 1969. Can you identify that magazine for us?

A Yes. This is what we would call the official souvenir program book for that pageant.

Q When is that printed?

A A few days before the pageant would be the final print of it.

- Q Do you distribute it at the pageant?
- A Yes, that's right.
- Q Is it sold?
 - A It's sold for a dollar, this particular book.
 - Q Do you have advertisements in there?
 - A Yes, there are advertisements in there.
 - Q Is there a list of the judges in that magazine?
 - A Yes, there is.

MR. KOVE: Your Honor, I'd like to introduce this into evidence.

The COURT: Any objection?

MR. KING: No objection, your Honor.

THE COURT: Received.

(Plaintiff's Exhibit 8 was received in evidence.)

MR. KOVE: Your Honor, I have no further questions

THE COURT: Cross examination?

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MR. KING: Just a few.

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CROSS EXAMINATION

BY MR. KING:

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MR. KING: I wonder if you'd be kind enough to let us see those brochures that the witness is reading from.

MR. KOVE: He has two here. Do you want to see the one he is reading from?

MR. KING: Yes.

- I gather the Miss Universe pageant has been produced for roughly 23 years; is that correct?
 - That's correct.
- Q During that period of time have you had these instructions you referred to about chaperones?
 - A To the best of my knowledge, yes.
 - In what form do those instructions appear?
- Well, during the time I was there they would have appeared in printed form; they would have been mimeographed and given, of course, to all the hostess chaperones.
- I direct your attention to that part of the instructions which you say state that a girl will be disqualified if she is found without a chaperone.
- Yes. Those instructions are given to them at the orientation meeting.
 - Is that a written instruction?

1	eljt	Parkinson-cross 3	8
2	A	That would be in the contestant handbook. Yes.	
3	Q	Is that in the contestant handbook?	
4	A	Yes.	
5	ର	You are certain of that?	
6	A	I would certainly think so. I probably put it	
7	there myself		
8	Q	You are not sure?	
9		I would recall writing a paragraph to that eff	ect,
10	yes.		
11	Q	Has that provision, that is to say disqualific	ation
12	been a part o	of the beauty pageant for 23 years?	1
13	Α -	I couldn't answer that because I could only an	swer
14	with relation	n to the times that I was there. Whenever I wa	s
15	there it has	been a part.	
16	Q	Has a girl ever been disqualified for being wi	th-
17	out a chapero	one?	
18	A	Not during the times that I was ever there.	
19	Q	Have you ever heard of a girl being disqualifi	ed
20	for being wit	thout a chaperone?	
21	Α	No, I do not think so.	
22	G	Is it your testimony that no girl has evern be	en
23	without a cha	aperone during the beauty pageant week?	
24	Α.	Not to my knowledge.	
25	Q	How would you know about it?	

A Well, the chaperone would be the one to report it.

There is a system of reporting, obviously, on that.

Q What would happen to the chaperone if it were found that she let one of her charges out of her sight? What would happen to the chaperone?

A We'd replace her with an alternate.

Q So you rely then, upon a system of reporting and you rely upon the chaperone to bring her own misfeasance to your attention?

A Not really, because, remember we have approximately 175 employees of our corporation surrounding the pageant also, and we are in the same hotels and in the same general vicinity of the operations, so I think we'd probably know it because we are in the same places they would be out by themselves, basically.

Q You did testify earlier that you relied upon the chaperone to bring it to your attention?

A We rely upon the chaperone to tell us if suddenly a girl is missing somewhere. That would not necessarily mean that the chaperone would be faulted for her being missing. She could --- it has never occurred --- but she could wander away, I suppose.

- Q Do you have a copy of this contestant handbook?
- A I can probably find one in our files.

MR. KING: If that is available, Mr. Kove ---

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MR. KOVE: Your Honor, after we break we will call the office and make arrangements for the contestant handbook.

THE COURT: You haven't got it with you?

MR. KOVE: No.

THE COURT: If you are going to put him back on the stand, you will have it.

Q Let us assume just this situation, where a chaperone is with two girls in the lobby of a hotel. One of them
wants to go back upstairs to pick up her purse. What happens?

A One of the girls wants to go back upstairs?

Q Yes.

A The chaperone would go back for her. She'd leave the two girls with another chaperone there. All three of them would leave together.

Q What if the three of them were not near some other chaperone?

A Then they'd all three go back upstairs.

Q What if one is downstairs in the lobby and one of the girls wants, just say, to go to the bathroom? What happens then? Do all three go in the bathroom?

A No, they a wait outside in the lobby, probably.

There are bathrooms in the libbies of all those hotels.

Q I am going to show you an ad, Mr. Parkinson, and ask you if you can tell me what that is.

ı	eljt	Parkinson-cross	41
2		(Defendant's ExhibitD marked for Identificat:	lon.)
3	વ	Could you tell me what that ad is for?	
4	Α ,	Yes. It's an ad from the New York Times for	a
5	beauty pagean	t called the Miss World - U.S.A. beauty page	ant,
6	and it's an a	d apparently paid for by ABC Television.	
7	Q	Is the Miss Word - U.S.A. another beauty page	eant,
8	and that is a	competitor of yours; is that correct?	
9	A	That is another beauty pageant, yes.	
10	Q	It's a competitor of yours then, is that rig	ht?
11	. A	I guess it is.	
12		MR. KING: I offer that in evidence.	
13		THE COURT: Any objection?	
14		MR. KOVE: No objection.	
15		(Defendant's Exhibit D was received in evide	nce.)
16	Q	Mr. Parkinson, let's go back to the situation	n in
17	Ohio where we	e are having local contests. Under what titl	e
18	would those t	itles be run? Let's assume on a strictly lo	cal
19	level within	a city of, say Columbus, what would the titl	e of
20	that contest	be?	
21	Α	The pageant would be the Miss Columbus pagea	nt,

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A The pageant would be the Miss Columbus pageant, preliminary to Miss Ohio and preliminary to Miss U.S.A. The actual title is Miss Columbus Beauty Pageant.

- Q The state finals would be Miss Ohio?
- A Yes, Miss Ohio or Miss Ohio Universe, depending

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on how the title is registered.

But it's up to them, the local franchisee ---

No. We tell them what to call it.

What do you tell them to call it in the case of the state finals?

It is either the state, Miss Louisiana, Miss Ohio or Miss Ohio - Universe. We have registration on some of those and we go according to the registration.

THE COURT: You mean registration in the several states?

THE WITNESS: Yes.

Registration for what title, please?

It would vary. In other words, where it would be available we could get Miss Louisiana, and if it was unavailable, you could get Miss Louisiana - Universe.

Have you registered in any state a title similar Q to Miss Louisiana, Miss New York, Miss Ohio, Miss New Jersey? Have you registered any title like that?

Yes.

MR. KOVE: Your Honor, I don't mean to object to the question, but there is another witness we have who could testify on the state registrations.

THE COURT: Do you have another witness?

MR. KOVE: Yes, Mr. Beier. I don't know if this

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2 witness has any knowledge of it.

THE COURT: He can say he doesn't know.

Q Your testimony is that you have registered in some states the titles of Miss New York, Miss Idaho or something along those lines?

A May I explain why this was probably done, a good part of this prior to my ---

I am not asking for an explanation. I am just asking for your testimony.

A Yes. It's my understanding that those titles are registered prior to 1967, so that I wouldn't be that familiar with some of them.

If, for example, Miss Ohio was registered, is it your testimony that no other beauty contest or contestant would be Miss Ohio?

MR. KOVE: I object, your Honor. It's argumentative and it asks the witness for a legal conclusion.

THE COURT: That is kind of a legal conclusion.

MR. KING: All right.

When did you come back to the Miss Universe Q pageant? You testified you had been away for a year and a half, two years.

A About two years, yes. I came back on August 13, 1973.

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- Are you aware of recent reports in the press concerning the present Miss Universe?
 - Concerning the present Miss Universe?
 - Yes.
- We are in the press a lot. I don't know what you are referring to.
- Is it a fact that the present Miss Universe or her predecessor was relieved from her title?
 - No, it is not. A
- Has any Miss Universe ever been relieved of her 11 Q 12 title?
- 13 No. A
- Has any Miss U.S.A. ever been relieved of her 14 Q 15 title?
- 16 Not to my knowledge. A

May I clarify one thing about that?

MR. KOVE: No. Only if you are asked a question.

THE COURT: On redirect he can ask you.

MR. KING: I have no further questions, your

Honor.

REDIRECT EXAMINATION

23 BY MR. KOVE:

> Q The reports about a contestant recently in the newspaper which appeared to be unfavorable, did that relate

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to another beauty contest?

- Yes, it did. A
- Which beauty contest was that? Q
 - Miss World Pageant.
 - Do you have any association with that at all? 0
- None whatsoever. A
 - Is that a competitor of the Miss Universe Pageant? Q
- It occurs in London, England. It is another beauty pageant. I guess you would call it a competitor, yes.
- But it is your testimony that the inferences in those questions did not apply to Miss Universe?
 - In no way. A

MR. KOVE: No further questions, your Honor.

THE COURT: One question out of curiosity. These Avis cars, do you pay for them or does Avis pay you for the privilege of having used them?

THE WITNESS: Yes, they pay for them for being in the film.

(Witness steps down.)

MR. KOVE: I would like to call as our next witness, Mr. Beier.

NORMAN BEIER, having been called as a witness on behalf of the plaintiff, was duly sworn and testified as follows:

DIRECT EXAMINATION

BY MR. KOVE:

Q Mr. Beier, what is your relationship to the plaintiff?

A I am the assistant secretary and the assistant general counsel of the plaintiff, as well as of its parent company which is Kayser Roth Corporation.

Q When you say that you are assistant general counsel, assistant general secretary, what do those functions entail?

Harold Glasser, who is also general counsel of Kayser Roth
Corporation, and vice president and director. And the Miss
Universe is an operating subsidiary under the direction of
Mr. Glasser, and directed by Mr. Parkinson as executive director, and we are intimately involved throughout the year in
the many, many contracts which are necessary for an operation
of this type. Contracts and dealings with the networks, the
various sponsors, primarily Proctor and Gamble, the appearances
the franchisees, everything.

Q When the Miss U.S.A. makes an appearance, or Miss Universe, do you have contracts that you have sponsors sign?

A We prepare an appearance aggreement, a very simple appearance agreement.

Q Did your office or your staff also prepare the

franchise	agreements	and	official	entry	forms,	plaintiff's
Exhibits	and 7?					

A Yes, we did.

Q Do you do that each year?

A We do this each year. We update the agreements, we make some revisions from time to time.

Q How long have you been in this position with Kayser Roth and Miss Universe?

A Since 1960.

Q Since this period of time you have been involved each year in the operations of Miss Universe?

A Yes, I have.

Roth Corporation in connection with the manner in which the beauty pageants are to be conducted?

MR. KING: Excuse me. I would object to the form of the question.

Q I will rephrase the question.

Does Kayser Roth Corporation or Miss Universe have any policy as to the conduct of the Beauty Pageants operated by Miss Universe?

A Well, we are very sensitive about the image of the pageant. We try to be extremely careful that there should be no scandal or anything offensive, anything reflecting ad-

2	vers	ely	on	the	pagear	nts	in	any	way.	We	go	to	great	lengths	to
3	try	to	mair	ntair	this	imag	ge	and	this	prac	etic	ce.		lengths	

- Q Did there come a time in January 1970 when you first learned about the defendant's proposed telecast of McCloud, Who Killed Miss U.S.A.?
- A The first time the matter came to our attention was when we were given a copy of the press release which is exhibit ---
- Q I show you plaintiff's Exhibit 3. Is this the copy of the press release you referred to?
 - A Yes.
 - Q What is the date of that press release?
- A The press release is dated January 22, 1970, but it did not come to our attention until about a week later.
 - Q What did the press release inform you about?

 THE COURT: I have read the press release.
- Q After you received the press release, and you learned that NBC was broadcasting McClous, Who Killed Miss U.S.A., what did you do then?
- A We immediately sent out three telegrams to the various executives of NBC.
- Q I show you plaintiff's Exhibit 4, consisting of three telegrams all dated January 30, addressed to various executives at NBC. Are these the telegrams you referred to?

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2 A These are copies of the telegrams.

MR. KOVE: I would like to have these marked in evidence, your Honor.

THE COURT: I thought they had.

THE CLERK: Three and four are in evidence.

MR. KOVE: I am sorry, your Honor.

Q What happened after you sent these telegrams?

A We received a letter from Mr. Haber, a senior attorney for NBC.

Q I show you plaintiff's Exhibit 5 in evidence. Is that the letter you have reference to?

A Yes, it is.

Q What is the dage of that letter?

A February 2, 1970. And it was delivered by hand.

THE COURT: But that was three days after the

| telegram.

MR. KOVE: The telegram was on the 30th, your

Honor.

Q After you received the letter from Mr. Haber, what was the next sequence of events?

A Mr. Haber informed us in the letter for the first time ---

THE COURT: I read the letter.

THE WITNESS: That Universal was involved, and we

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A Yes.

3 Q When did you see the film for the first time?

A The day before the television program, which was I think Friday, February 16th.

Q Had you tried to see it before February 16th?

A We had made repeated requests of Mr. Dubin to see the film, and --- to see the film immediately, and we were unable to get to see it until that day.

Q On February 16th, do you recall where you saw the film at?

A At Rockefeller Center, at NBC.

Q What time of the day, do you recall?

A It was in the early afternoon.

Q Who was present when you saw the film?

A Well, Mr. Landon who was then executive director of Miss Universe, went with me. Mr. Glasser was unavailable at the time. The two of us went there. We met with Mr. Haber and with another gentleman.

Q Do you recall the other gentleman's name?

A I don't, but I made a note of his name. I am very bad on names, your Honor.

THE COURT: You and me both.

THE WITNESS: Roland Scott. I don't know who he is, he was with NBC, I believe.

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Q After you saw the film, was there any conversation

A Well, we indicated to Mr. Haber, Mr. Landon and I indicated to Mr. Haber ---

MR. KING: Excuse me. I object to the word "Indication."

THE COURT: As near as you can remember what was told.

A We told Mr. Haber that we were quite distressed by the film, by the use of our trademark, and by the characterization in the film.

- Q What was his response, to your recollection?
- A And we said that we would like a meeting.
- Q With whom?

A Well, we felt that Mr. Glasser should come over right away and discuss this.

Q You wanted a meeting between Mr. Glasser and Mr. Haber; is that correct?

A Mr. Glasser and ourselves and whoever were the people, you know, responsible or who could speak on behalf of NBC or Universal.

- Q Did such a meeting take place?
- A Yes, it did.
- Q At approximately what time?
- At about 5 p.m. that day.

Q What took place at that meeting?

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America.

A Well, Mr. Glasser expressed the --- we in the interim had given Mr. Glasser a full report on the film as we

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saw it, and he expressed to them our objections first to the repeated uses of cur trademark in the film and also as to the general tener of the film, which we felt degraded beauty contests and our beauty contest; and we asked them either not to show the film which of course they rejected out of hand, or to make changes in the film to delete the references to Miss U.S.A which we felt was a perfectly feasible process. There was a method of doing that, i understand.

- Q Was that accepted or rejected?
- A That was rejected.
- Q Did anyone on behalf of the other parties say anything else to you or to Mr. Glasser in your presence?

A They felt that it was too close to showtime to start making changes. They also told us that it would be expensive, they didn't tell us how much it would cost, but they said it would be expensive to --- there is a term they used -- over something --- to delete the voice and put --- delete the Miss U.S.A. and put something else on. They said it could be done but it would be expensive and they said they had no intention of changing it; they were going to present the program as is.

And I might just mention, your Honor, that someone I don't know who it was, said that, you know, we are going to take our chances and if we have to pay you later, we will;

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something like that.

were going to sue.

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MR. KING: I object to that.

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THE COURT: If you cannot identify who said it,

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strike it.

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Was there any other conversation that took place?

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A We told them that if they did not change it we

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Q Did you actually commence a suit?

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A Yes, we did.

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When did that take place?

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A Before the program on February 17, the next day

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THE COURT: Is that this suit?

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MR. KOVE: Yes, your Honor, that is this liti-

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gation.

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THE COURT: Was there originally a request for a

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stay?

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MR. KOVE: No, your Honor. There was no prelimi-

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nary request made.

earlier?

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Q Was any explanation given by the people you met with why you had not seen the film before the 16th, so that

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these questions as to changing the title could be discussed

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MR. KING: I object to the form of the question.

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A No.

THE COURT: Nothing was said on that subject.
Probably the reels weren't working.

THE WITNESS: We had complained about the fact that we had asked to see the film as early as February 4th or 5th, and at the last minute our problem was their problem, not ours, that we couldn't get to see it until the last minute.

THE COURT: What did they say in response to that, if you remember?

THE WITNESS: They didn't feel responsible.

Q In connection with your duties as assistant general counsel of Miss Universe and Kayser Roth Corporation, are you familiar with the trademark procedures that are followed by these companies?

A Yes.

Q What is the policy of Kaiser Roth Corporation and Miss Universe in connection with obtaining and maintaining trademarks in effect?

A We have a very active trademark program. We are very careful to protect our trademarks and to use them properly. I was trained by Milton Handler, and he was very agressive in protecting trademarks.

We supervised all use of trademarks, and we have many trademarks.

Q When you say "we," you mean the law department of

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2 | Kayser Roth?

A The law department and myself particularly. I do most of the trademark work.

Q That is your area of responsibility, trademark work?

A That is one of my areas of responsibility, but I do the trademark work for the company.

Q Were you instrumental or did you perform the work in connection with obtaining the two trademarks in question here, plaintiff's Exhibits 1 and 2?

A Yes, I did.

Q I show you plaintiff's Exhibits 1 and 2, being the Miss U.S.A., Miss United States of America trademarks.

A Yes. I prepared those applications and obtained those trademarks for the company.

Q In addition to these trademarks, did Miss Universe make applications for trademarks in various states?

A 'es, we did.

Q What was the nature of those trademarks?

A Well, we ran into a slight problem with the Miss America organization. Not the organization itself, but with some of the local franchisees who complained about our use of some of the state trademarks and we were complaining about some of their usages.

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group.

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Q I show you plaintiff's Exhibit 8 in evidence, the

I think we also have doll registrations --- I

think we have various registrations for Miss U.S.A. Quite a

Miss U.S.A. bulletin. Is that a registered trademark for that bulletin?

A Yes, it is.

MR. KING: Your Honor, I object to that portion of Mr. Beier's testimony remaining in evidence, which refers to possible registrations other than that for this particular publication that he identified. His testimony is as I recall that he thinks he has others. If he knows it, fine.

MR. KOVE: Your Honor, I have furnished the witness with a list.

Q Can you identify any other registrations that you have for Miss U.S.A.?

A You have given me a list where it indicates the ones I mentioned. Dolls, swimsuits, and the publication, in addition to these two.

MR. KOVE: Your Honor, I have no further questions
THE COURT: We will recess until two o'clock.

(Luncheon recess.)

2 AFTERNOON SESSION

(Two o'clock, p.m.)

(Film Shown: "McCloud - Who Killed Miss U.S.A.")

THE COURT: We will adjourn until tomorrow at

10:30.

(Adjourned to March 14, 1974 at 10:30 a.m.)

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2	MISS UNIVERSE, INC.,		
3	Plaintiff.		
4	vs. 70 Civ 657		
5	NATIONAL BROADCASTING CO, INC., and UNIVERSAL CITY STUDIOS, INC.		
6	Defendants.		
7	March 14, 1974		
8	10:55 a.m.		
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11	THE COURT: Good morning, gentlemen.		
12	MR. KOVE: Your Honor, I would like to continue		
13	with the examination of Mr. Beier. Can we also let the record		
14	show that the Court and counsel and parties saw the film,		
15	called "McCloud- Who Killed Miss U.S.A."		
16	MR. KING: Shall we deem that in evidence, your		
17	Honor?		
18	THE COURT: I would assume so.		
19	(Defendant's Exhibit E was deemed received in		
20	evidence.)		
21	MR. KOVE: I do not think we marked the film which		
22	we saw yesterday morning. Our next number is 9. That is the		
23	Miss U.S.A. film.		
24	(Plaintiff's Exhibit 9 was received in evidence.)		
25	NORMAN BEIER, recalled as a witness.		

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2 DIRECT EXAMINATION

BY MR. KOVE:

Q Mr. Beier, yesterday you mentioned a telephone conversation that you had with the attorney for Universal, Mr. Dubin. Was that a telephone conference call or on a loud-speaker call where you could hear Mr. Dubin.

A Yes. Usually when I am working on a matter with Mr. Glasser and he calls somebody on it, he will call me in and put the telephone call on a speaker phone in his office and notify the other side that I am present.

- Q So you could hear what Mr. Dubin was stating?
- A Right.
- Q During the conversation that you had with Mr. Dubin, did he make any reference to a possible licensing arrangement?
- A Mr. Dubin was quite adamant --
 MR. KING: I object to the answer as being unresponsive. Yes or no.
 - A Yes.
 - Q What did he state over the telephone?
- A Mr. Dubin was quite adamant when we initially spoke to him, that he would not change the name or do anything to stop the film. That was his position from the outset. He did say to us, would you consider licensing us to use your

trademark.

Q What was your response?

A Mr. Glasser responded that we could not even consider licensing unless we know what it is we are licensing and we would like to see the film.

Q Then you did see the film, as you testified previously, on February 16th.

A On the day before the showing.

Q Was there any other discussion from that telephone conversation thereafter concerning any licensing?

A No, there wasn't.

Q Yesterday afternoon, you saw the film "McCloud - Who Killed Miss U.S.A." You also saw it on February 16th.

After you saw it on February 16th when you were with the people representing the two defendants, did you furnish those people with the parts that you felt were objectionable?

was going on and I reported back to Mr. Glasser as to the various scenes that I thought were objectionable. When we met with the four gentlemen I mentioned --- I'd like to note, your Honor, that I had some question as to what a representative from MCA was present --- we note that when the film was shown yesterday that at the end it said exclusively distributed by MCA so that was their relationship, which I did not know until

2 now.

When we were present with them, we told them and I told them, primarily, the various scenes that we objected to about the film.

- Q Do you recall the items which you listed?
- A Yes. First ---
- Q Do you want a copy of the script to refresh your recollection?
 - A No, I don't think I need it.

MR. KING: I am not sure I understand the relevance of this line of questions.

MR. KOVE: There was a conversation on the 16th, at which the plaintiff advised the representatives of the defendants the parts of the film which they felt were objectionable. He is just repeating that conversation.

MR. KING: I don't see the relevance.

THE COURT: They have a claim somewhere of bad faith.

Marks, either Miss U.S.A. which is in the title, or Miss United States which is on the book, and Miss U.S.A. is also mentioned once or twice, I think, in the course that this girl who was murdered had a clear shot at the title, Miss U.S.A. We object to about eight or nine usages of the trademark in

2 the title and in the script itself.

Secondly, we pointed out that we felt that the movie, the film, is about a girl, Miss Tennessee, who was a contestant in the beauty contest, and that the thing we found most objectionable is that the title of the thing and the use of our trademarks had no relevancy to the film. We though they were just taking our title, and we told them so, for purposes of using it for their publicity purposes.

Miss Tennessee was murdered. She was a contestant Why then, was the book entitled, who murdered Miss United States when it wasn't Miss United States? If they had said, "Who Murdered Miss Tennessee," why was the title of the film Who Killed Miss U.S.A.?

Q Did they respond to that?

A You know, these were objections we were making.

They told us --- they didn't answer that.

Q Did you give them any other objections that you had?

A Yes. We also felt that the two contestants as contestants shown in the film were portrayed in a very bad lgiht. Miss Tennessee was unchaperoned, last in her class at school, a girl depicted in several places as turning men on and ---

THE COURT: Is that bad?

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THE WITNESS: From our point of view, it was bad, your Honor. Going out on dates in the course of the beauty contest. And her friend, the only friend shown in the film, was Miss New York, and she was picutred as giving some sort of demonstration on a bed in Times Square.

We don't know exactly what that was. But the whole characterization was, we thought, belittling to beauty contests in general, and particularly to ours since they were using our trademark.

After the film was shown on February 17, did you Q thereafter learn of any reruns of the film?

Yes. In the following September of 1970, they rebroadcast the film.

- Q Did you advise them that this was objectionable --THE COURT: Nationally, or just locally? THE WITNESS: Nationally.
- Did you advise them of your objections?

Yes. We objected to it. They did make one small change. I believe they deleted the Miss U.S.A. in the initial flashing on of the title of the picture. However, their publicity releases evidently did not delete that title because we noticed that the newspapers carried the program as, "McCloud -Who Killed Miss U.S.A."

> Q Mr. Beier, I want to show you defendant's Exhibit

D which is an ad in the New York Times on September 25, 1973 for the Miss World - U.S.A. Beauty Pageant on ABC Television.

A Yes.

Q Can you explain to the Court how this competitor is able to use the title Miss World - U.S.A.?

A We don't really consider it a competitor. I think that was the distinction Mr. Parkinson was trying to make. It's another beauty contest run out of England. They have a local franchisee in the United States and some years back we brought suit against the local franchisee for using Miss U.S.A. That suit resulted in the decision in the Petrocelli case.

THE COURT: 408 Fed. Second, 506.

A The Court of Appeals in the case did sustain our position and held that our trademarks had secondary meaning.

They permitted the defendant to use the trademark in the form Miss World - U.S.A. And that is a permissible form. We police the use of the trademark.

Occasionally a newspaper slips and says Miss
U.S.A. when they mean the Miss World contest and we write
letters or call them up and make usre it doesn't happen again.

MR. KOVE: No further questions.

THE COURT: As a matter of curiosity, is this your last witness?

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2 MR. KOVE: I will just want to recall Mr.

Parkinson very briefly.

THE COURT: Mr. King will defer cross examination until after you have recalled Mr. Parkinson.

MR. KING: I'm sorry, your Honor?

THE COURT: I say you are deferring cross examination until after.

MR. KING: I would like to ask Mr. Beier a few questions

THE COURT: I say you are deferring.

MR. KING: All right.

MR. KOVE: Mr. Parkinson, please.

ROBERT PARKINSON, was recalled and further

testified as follows:

16 DIRECT EXAMINATION

BY MR. KOVE:

THE CLERK: You are still under oath, Mr.

19 | Parkinson.

Q Mr. Parkinson, you saw the film yesterday, "McCloud-Who Killed Miss U.S.A." There were various scenes in the film two of which represented, were flashback scenes showing various activities of the girl who was killed in her hotel room. There are also scenes, flashbacks, showing her apparently walking around on streets in the city.

Can you advise us whether these scenes properly depicted a pageant week run by Miss U.S.A. in 1969?

could be in that position.

MR. KING: I object.

THE COURT: Overruled.

A No, they did not. I made some notes on some of those scenes because they could not have occurred that way.

For example, I think the walking scene that you are referring to is the one in Central Park, it appeared to be in Central Park, and she was walking about by herself. It

simply could not be done. There is no way that the young lady

Also the flashback, she answered the door herself. She threw the door of the hotel open when the murderer, whoever it was, came in. There is no way that is done, because as I mentioned yesterday, the hostesses are with the girls at all times. They answer the door. If there is a knock on the door from someone, and they answer all the telephone calls. So it would be impossible for that girl to have been in that particular position.

There was also a reference, I think later, to room service, which for many reasons is not permitted at the pageant. There is no such thing as room service during the pageant, even for Coca-Colas or anything like that. Nobody brings a tray to the room. That couldn't have occurred either.

At one point in the film there was a shot from the hallway with the room apparently on the left looking out to the end of the hall.

A I was a little surprised about the layout, because we would not have had that sort of a layout. When, for example we used the five hotels, roughly ten girls to a hotel, those rooms are all isolated and in a section by themselves across from each other so you eliminate to the best of your ability a distance between the entire unit in a particular hotel.

This room appeared to be from what looked like in the film down around the corner. It looked like it was off at the end of the hall. There were no rooms on the other side.

It was a seemingly isolated location, a strange place to put a girl, es ecially if she was by herself.

Q The hotel fictionalized in the movie was the Hotel Cumberland on Lexington Avenue and 30th Street. Two questions.

One, would that hotel or the type of hotel fictionalized in the movie, would that have been the type of hotel that Miss U.S.A. would have used?

A In no way.

Q I guess I have only one question, then.

Yesterday, when we were finishing your cross examination, you were asked to make a review of your files with

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respect to material that was furnished to the contestants in the Miss U.S.A. contest in 1969. Did you make the search of your files?

A Yes. Of the files in our office. Now ---

Q Let me just finish. Did you find any material which was distributed to the contestants?

A Yes, I did.

Q Do you have copies of that material with you?

A Yes, I do.

MR. KOVE: Your Honor, may we mark this?

Plaintiff's Exhibit 10, a memo dated April 30, 1969 from Bob

Parkinson, and a letter from Edward Pierce, which is undated.

(Plaintiff's Exhibits 10 and 11 marked for identification.)

Q Mr. Parkinson, you were specifically asked if you came up with anything in writing which advised the contestants that they were disqualified if they were found without a chaperone. Did you find any memo on that point?

A No, I did not find it in our files. May I explain why?

Q Yes.

A In 1969 and for all the years we were in Miami Beach we had our operations office in Miami Beach, Florida. Since the pageant is not there anymore, all of those files

have been stored. They are inaccessible to me on that short notice.

Secondarily, we also moved our executive office from 509 Madison to 666 Fifth Avenue as of roughly six months ago and it's possible that some of those materials --- as a matter of fact, it's quite probable that the majority of the pageant materials from 1969 are in storage. What we did find in a file drawer marked General File 1969 were those materials which I thought were with me this morning, which if I may tell you what those are ---

Q We will get to that in just a moment. The instructions with respect to disqualification if without a
chaperone, when were those instructions given to the contestants?

A They were given to them in two forms. One, in what I refer to as the contestant handbook. The reason I refer to it in that fashion is it was put in a celluloid notebook type thing like you use in college, and presented it to them upon their arrival in Miami Beach. The second form in which those instructions went was in the orientation meeting which I referred to yesterday, at which time the hostesses and chaperones receive those verbal instructions.

Q Plaintiff's Exhibit 10 is your memo of April 30, 1969. When would you send that memo?

This is undoubtedly sent April 30 or the 31st of

the girls who participate in the Miss U.S.A. pageant are college girls. So during this period of time they are in school. We send this memo to them prior to their departure for the pageant. A lot of the material in here is reiterated in that contestant's handbook. But this is a general memo that is sent to them at their school so that they have a general idea, I think there is some reference to clothing and that sort of thing, in here.

In addition, a copy of this memo is sent to their

April or somewhere in that general vicinity. The majority of

Q Is there anything in the memo, do you advise them as to the chaperone and sleeping arrangements?

parents at their home so that they have a general idea of the

A Yes. I can give you one or two ---

Q You can read it.

procedures they would be operating under.

A Under hotels, there is on the first page here a paragraph: "You will room with one other contestant and your Miss U.S.A. hostess chaperone from the Miami area. Only contestants, hostesses and members of the executive staff are permitted in the canteen."

There is another paragraph here, and I referred to yesterday, these are put into paragraphs and as I said, I

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recalled the writing of a paragraph. Under hostess chaperones, "These wonderful Miami area ladies are all volunteers and outstanding citizens of their communities. They give un their husbands and families for 10 days to help you enjoy your stay. Your hostess will meet you at the airplane upon arrival and will be with you all the time until you step back onto the airplane after the pageant."

It won't be necessary to read any more.

This memo was sent to all the contestants prior to their departure?

Yes. They would receive this at their college before they departed.

MR. KOVE: Your Honor, I would like to have this admitted into evidence.

MR. KING: No objection.

THE COURT: Received.

(Plaintiff's Exhibit 10 was received in evidence.)

Exhibit 11 is a letter from Edward Pierce. Can you describe who Edward Pierce was and what was the purpose. of this letter?

Yes. Edward Pierce was the pageant producer and director, and this particular letter was in the same envelope with that memo. It went, again, to all state pageant winners and the reason that Mr. Pierce wrote a separate memo, I make

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ceived.

a reference to Mr. Pierce in that one, but the large majority of time that the girls spend will be with the pageant production staff and with a lot of the people and Mr. Pierce explains in his memo, so they do not arrive in the Miami Beach area totally unfamiliar with those folks they are going to be working with, Mr. Pierce attached a memo to mine. He explained about not being late for rehearsals and that type of thing.

MR. KOVE: Your Honor, I offer that into evidence.

THE COURT: If there is no objection, it is re-

(Plaintiff's Exhibit 11 was received in evidence.)

MR. KOVE: I have no further questions of the witness. That ends my direct case, your Honor.

THE COURT: Mr. King after cross examination moves to dismiss. I am going to hear argument why I shouldn't grant the motion.

MR. KCVE: Your Honor, I think we have established a prima facie case of trademark infringement as well as unfair competition. We submitted our two certified copies of our trademarks which evidenced the ownership of the trademarks. It is clear that the defendants have used both trademarks, Miss U.S.A. and Miss United States both in the title of the film and also in the cover of the book, and in the film as well as oral references to them.

without the consent of the plaintiffs and, in addition, as far as the unfair competition, first the disparagement, the manner in which they have used these references to the names, to the trademarks in the film, the various things that the two witnesses have testified to, the fact that the girls were not chaperoned and were depicted in what I call an immoral manner, would constitute product disparagement as far as the plaintiff is concerned.

On the unfair competition, their advertising of the Miss U.S.A. and both in the title and in the advertising which they presented to the press, constitutes what we call the regular palming off, where they are taking the good will that we built up over the years, using Miss U.S.A., but it in their title, advertised it, it would naturally attract interest because it is something that is known to the public.

Further, your Honor, that I think is further evidenced by the fact that the use of the words Miss U.S.A. both in the title and in the content is only being used for an attention getting device. It is a non-descriptive use because the girl who was killed in the film is actually Miss Tennessee. She has not won the prize Miss U.S.A.

In that context, the film was being used solely for the use of a non-descriptive use, which in the trademark

area indicates a trademark. If it is a descriptive use, then that is evidence of a non trademark use. But where it is being used in a non-descriptive manner, as an attention getting device, that is being used in the trademark sense.

THE COURT: Anything further?

MR. KOVE: I think all of our material is covered in the brief we previously submitted, your Honor.

One more very important point, and that is another element which is extensively discussed in the Polaroid case and some of the other cases cited in the brief is the bad faith on the part of the defendants. As soon as the plaintiff learned about the existence of the film and the use of the name it made every effort to get in touch with the responsible people to see the film and make some sort of an arrangement. But the other side did not respond until the day before the film, which was obviously much too late for anybody to accomplish anything.

THE COURT: Probably they just couldn't get their reels together.

MR. KOVE: your Honor, I think I have covered basically all the points that we have referred to in the brief. There was one more point and that is New York statute under the general business law about the dilution statute, the New York State dilution statute. There is no provision in that statute for general remedies other than an injunction, but I think if

we have established any of the other points in the case, then
I think clearly we have established our rights under that New
York statute.

One other thing. In the pretrial order it was agreed that this case, this trial would only be limited to the question of liability and there would be no issue here about damages, and therefore, we have presented no testimony on that point.

MR. KOVE: Under the trademark statutes the

Court would have discretion to impose a reasonable royalty for
the use of the name, and in addition, we would be entitled to
general damages which I believe, your Honor, would include legal
fees, counsel fees. I would have to develop that information
in a separate memorandum. But generally, the general rule is
that the Court has the discretion to impose, after testimony
is given, a reasonable royalty.

THE COURT: I may be in error, but I am not in doubt. I do not think you have made out a case and I am going to dismiss your complaint. In the first place, as to the trademark use, certainly they used the names Miss Tennessee and Miss U.S.A. to attract attention, there is no doubt about that. But I do not think that is actionable itself. I remember a moved being called Breakfast at Tiffany's, I'm sure —

I don't know - but I'd be very surprised if they had a license from Tiffany's or if Tiffany would give them a license for it.

But the mere use of somebody's name to attract attention in and of itself is not actionable.

The main thing in this is was there a likelihood to create confusion. There is no possibility that it could have created confusion. Nobody seeing the title "McCloud - Who Killed Miss U.S.A." is going to get the idea they are water a beauty contest. Nobody looking at this picture would have the idea that they were watching a beauty contest. Nobody wanting to look at a beauty contest would look at this picture.

obviously, for that reason. And here is no overlap between the products. In no circumstances is the strength the manufactural, although obviously the case that you have cited dicates they do consider they have a strong mark and I as they do. There was no pretense of confusion and no one case gests any actual confusion. There was no palming off; by hypothesis what I have said before indicates there couldn't have been any intent or otherwise to palm off.

On trademark liability or product disparamenent that kind of goes on the same basis as other kinds of libel, and you have to show some kind of damage.

There is no damage suggested here except lawyer

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fees and that hardly comes within the product trade libel, so you don't need to get into the question of whether the First Amendment would protect the defendant in any trade libel that might be involved.

But it would seem to me clearly it would, if it were. If I happen to feel that --- I am not going to say I do, but I happened to be a movie producer who felt that beautify contests were a socially anti-productive type of activity, I would have a perfect right to make a movie portraying beauty contests as rackets or anything else, as long as I didn't make it a maliciously false statement under the general rubric of the Sullivan case. I find nothing even remotely suggesting that here.

That the Miss Tennessee portrayed didn't follow all the rules and regulations of the Miss U.S.A. competition certainly is at grounds of establishing that the producers were willfully and maliciously wrong. Even after hearing all the testimony here, I think a producer could conclude that maybe sometimes a contestant during the 23 years the contest has been going on, may have eluded her chaperone once. The fact that she "turned people on", I see nothing malicious about that. And the fact that her co-contestant is whon on a bed in Times Square, that was perfectly apparently a professional modeling job, nothing malicious about that.

The hotel room, to be sure, is probably not the hotel that would have been selected, but it was a perfectly respectable hotel from anything I saw on the screen. I do recollect a fleeting comment by somebody that he thought that beauty contests were a racket, or something. Somebody seemed to me to be saying something like that. But certainly not within any definition of libel that I ever heard.

Unfair competition, the sine qua non of unfair competition is palming off and intent to deceive the public.
There was no such intent conceivable in this case for the reasons I have indicated.

In brief, actually the whole case is covered like a blanket, by the Notre Dame case. The University of Notre Dame against 20th Century Fox. There, that of course, is an equity case and this is a law damage case. The Court did have a dictum at the end of it that if there was any remedy it was in law for libel, but I have indicated that there would be no possibility of proving libel in this case. Everything else in the Notre Dame case, including the --- it was even worse because in the Notre Dame case the plaintiffs tried to get Notre Dame to take a fee; I don't know if that is in the opinion, but I happen to know it is a fact, for permitting the movie company, the producers tried to get Notre Dame to take a fee, and they refused, saying that it was an outrageous idea,

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law.

Jeopardized them, and everything else. And knowing Notre

Dame's having turned down a fee in advance, the defendants

went ahead and made their movie.

Certainly, in all the claims that you have here,

Father Hesburgh had them in spades in that case, and the Court

quite clearly threw it out, although technically it was an

equity case and not a law case.

As you indicated in your remarks as to the mark dilution, you really have to prove the rest of the case before that comes into question because there has to be --- dilution proceeds on the likelihood of confusion. There is no possible likelihood of confusion in this case.

Those are my findings of fact and conclusions of

MR. KOVE: Please note my objection for the record Will counsel for the defendant submit a proposed order?

THE COURT: I imagine he will do that.

MR. KING: Yes, your Honor.

MR. KOVE: Your Honor, will there be a written

opinion?

THE COURT: No.

MR. KOVE: Just in the record.

THE COURT: Yes.

MR. KOVE: Thank you, your Honor.

129a

United States Patent Office

808,974 Registered May 24, 1966

PRINCIPAL REGISTER Service Mark

Ser. No. 105,531, filed Sept. 30, 1960

MISS U.S.A.

Miss Universe, Inc. (California corporation)
425 5th Ave.
New York 16, N.Y., by change of name from
Miss Universe Beauty Pageant, Inc. (California corporation)
New York, N.Y.

For: PROMOTING THE SALE OF GOODS AND SERVICES OF OTHERS THROUGH THE MEDIUM OF A BEAUTY CONTEST CONDUCTED ON A NATIONAL AND REGIONAL BASIS, in CLASS 101. First use 1952; in commerce 1952.

J. M. BREEN, Examiner.

REGISTERED FOR A TERM OF 20 YEARS FROM May 24, 1966

AFFIDAVIT SEC. 8
ACCEPTED



CERTIFIED TO BE A TRUE COPY OF THE REGISTRATION, WHICH IS AN FIRLL FORCE AND EFFECT, WITH LOTATION OF ALL STATUTORY ASSURED TAKEN THEREON, AS DISCUSSED BY THE REGISTRATION OF THE UNITED STATES PACENT OFFICE. SAID BECOODS SHOW THAT TO THE BECKSTRA-

Attest:

Attesting Officer Acting Commissioner of Patonts

JION IL Registrant

United States Patent Office

808,975

Registered May 24, 1966

PRINCIPAL REGISTER Service Mark

Ser. No. 105,908, filed Oct. 6, 1960

MISS UNITED STATES OF AMERICA

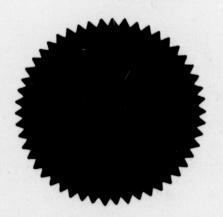
Miss Universe, Inc. (California corporation) 425 5th Ave. New York 16, N.Y., by change of name from Miss Universe Beauty Pageant, Inc. (California corporation) New York, N.Y

For: PROMOTING THE SALE OF GOODS AND SERVICES OF OTHERS THROUGH THE MEDIUM OF A BEAUTY CONTEST CONDUCTED ON A NA-TIONAL AND REGIONAL BASIS, in CLASS 101. First use 1952; in commerce 1952.

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JION IL Registrant

Attest:

Acting Commissioner of Patonis

PLAINTIFF'S EXHIBIT 3

January 22, 1970

'WORLD PREMIERE' ON 'NBC TUESDAY NIGHT AT THE MOVIES'

DENNIS WEAVER STARS AS WESTERN LAWY WIN SOLVES NEW FOX MURDER TO CHAGRIN OF CITY POLICE IN McCLOUD: WHO KILLED MISS U.S.A.

Dennis Weaver stars as a Western deputy marshal who finds himself in New York City solving a murder, in "McCloud: Who Killed Miss U.S.A.?," a World Premiere colorcast on NBC Television Network's "NBC Tuesday Night at the Movies," Feb. 17 (9-11 p.m. NYT).

The movie, made for television, co-stars Mark Richman, Diana Muldaur, Terry Carter, Shelly Novack, Craig Stevens, Julie Newmar, and Nefti Millet.

U. S. Deputy Marshal Sam McCloud (Weaver) of New Mexico is assigned to take a prisoner, James Waldron (Novack), to New York to be a witness in the trial of Puerto Rican busboy Luis Ramos (Millet), who is accused of murdering a beauty queen.

When the plane lands in New York, Waldron is kidrapped and McCloud is handcuffed and dumped in a rural area. He makes his way back to the city, where Chief of Detectives Peter Clifford (Richman) takes him for a country bumpkin and orders him to return to New Mexico. McCloud refuses and is determined to complete his assignment to deliver the prisoner to Clifford.

McCloud is aided by Chris Coughlin (Miss Muldaur), who is writing a book about the murder case, and Sgt. Joe Broadhurst (Carter), who thinks that McCloud may be more competent than his Western attire indicates.

'World Premiere' -- Tuesday Night Movie' - 2

Craig Stevens plays Del Whitman, defense attorney in the trial, and Julie Newmar appears as Adrienne Redman, friend of the murder victim.

"McCloud" was produced by Leslie Stevens, directed by Dick Colla, and written by Stanford Whitmore, Richard Levinson, William Link.

- NBC-TV PROGRAM HIGHLIGHT FEB. 17 ----

NBC TUESDAY NIGHT AT THE MOVIES: "World Premiere" of "McCloud: Who Killed Miss U.S.A.?"--Western Deputy Marshal Sam McCloud (Dennis Weaver) solves a murder in New York, much to the chagrin of the city's police force. (Color.)

----0----

NBC-New York, 1/22/70

PLAINTIFF'S EXHIBIT 4

CONFIRMATION OF MESTAGE FILED BY PHONE

MR. JULIAN GOODMAN, PRESIDENT

NBC. INCORPORATION

ROCKEFELLER CENTER

8 JAN 30 132P EST

162 PDF 2 EXTRA FR SHEET 1 757-9600

NYC

WE ARE ADVISED THAT YOU ARE PLANNING TO TELECAST

A PRODUCTION ENTITLED (MCCLOUD, WHO KILLED MISS USA?)

ON NBC (TUESDAY NIGHT AT THE MOVIES), FEBRUARY 17

1970). THE DESIGNATION, TITLE, TRADEMARK AND CONCEPT

(MISS USA) ARE THE EXCLUSIVE PROPERTY OF MISS

UNIVERSAL, INC REGISTRATED IN THE UNITED STATES

PATENT OFFICE UNDER REGISTRATION NUMBERS 808,974,

847, 877, AND 810, 421. YOU HAVE ALREADY ISSUED

MISS DAY SDR R

CFN FURN

MISS UNIVERSAL, INC 640 5TH AVE NYC

8 JAN 30

SHEET 2

STAIR NE

757-9600

PUBLICITY IN CONNECTION WITH THIS TELECAST WHICH
SUGREST THAT BOTH THE TITLE AND CONTENTS OF THE
PRODUCTION ARE OBJECTIONABLE AND CONSTITUTES A
CLEAR INFRINGEMENT OF OUR VALUABLE PROPERTY RIGHTS,
TO WHICH WE STRENUOUSLY OBJECT. WE REQUEST THAT YOU
IMMEDIATELY SUSPEND ALL PLANS FOR THIS TELECAST AND
CEASE DISSEMINATION OF ANY FURTHER PUBLICITY
MATERIAL IN CONNECTION THEREWITH. THIS WILL ALSO
CONSTITUTE NOTICE THAT WE INTEND TO HOLD YOU
ACCOUNTABLE FOR ANY DAMAGES SUSTAINED BY US AS THE
RESULTS OF YOUR INFRINGEMENT OF OUR PORPERTY RIGHTS.

PLEASE ACKNOWLEDGE IN WRITING THAT YOU INTEND TO

COMPLEY WITH THIS REQUEST.

MISS UNIVERSAL, INC HERBERT K. LANDON EXECUTIVE DIRECTOR URNISH CHY WESTERN UMION TO GRAPH CO.

M R. MORT WERNER, VICE-PRESIDENT

IN CHARGE OF NETWORK AND PROGRAMING

WE ARE ADVISED THAT YOU ARE PLANNING TO TELECAST A

PRODUCTION ENTITLED (MCCLOUD, WHO KILLED MISS USA?)

ON NBC (TUESDAY NIGHT AT THE MOVIES), FEBRUARY 17,

1970. THE DESIGNATION, TITLE, TRADEMARK AND CONCEPT

(MISS USA) ARE THE EXCLUSIVE PROPERTY OF MISS UNIVERSAL,

INC, REGISTRATED IN THE UNITED STATES PATEN OFFICE

UNDER REGISTRATION NUMBERS 808, 974, 847, 877, AND

810, 421. YOU HAVE ALREADY ISSUED PUBLICITY IN

8 JAN 30 150P EST 162 PDF 2 EXTRA 577-9600

NYC

CFN FURN
MISS UNIVERSAL, INC
640 5TH AVE NYC

SOCIAL PLMINDER

MISS DAY SDR R

CONNECTION WITH THIS TELECAST WHICH SUGGEST THAT

BOTH THE TITLE AND CONTEND OF THE PRODUCTION ARE

OBJECTIONABLE AND CONSTITUTES A CLEAR INFRINGEMENT

OF OUR VALUABLE PROPERTY RIGHTS, TO WHICH WE

STRENUOUSLY OBJECT. WE REQUEST THAT YOU IMMEDIATELY

SUSPEND ALL PLANS FOR THIS TELECAST AND CEASE

DISSEMINATION OF ANY FURTHER PUBLICITY MATERIAL IN

CONNECTION THEREWITH. THIS WILL ALSO CONSTITUTE

NOTICE THAT WE INTEND TO HOLD YOU ACCOUNTABLE FOR

ANY DAMAGES SUSTAINED BY US AS THE RESULTS OF YOUR

INFRINGEMENT OF OUR PROPERTY RIGHTS. PLEASE A

ACKNOWLEDGE IN WRITING THAT YOU INTEND TO COMPLEY

WITH THIS REQUEST.

8 JAN 30

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MISS UNIVERSAL, INC HERBERT K. LANDON EXECUTIVE DIRECTOR

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SOCIAL BEMINDED

8 JAN 30 140P EST

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NBC TELEVISION NETWORK

ROCKEFELLER CENTER

MR. DON DURGIN, PRESIDENT

WE ARE ADVISED THAT YOU ARE PLANNING TO TELECAST A PRODUCTION ENTITLED (MCCLOUD, WHO KILLED MISS USA?) ON NBC (TUESDAY NIGHT AT THE MOVIES), FEBRUARY 17, 1970. THE DESIGNATION, TITLE, TRADEMARK AND CONCEPT (MISS USA) ARE THE EXCLUSIVE PROPERTY OF MISS UNIVERSAL, INC REGISTRATED IN THE UNITED STATES PATENT OFFICE UNDER REGISTRATION NUMBERS 808, 974, 847,877 AND 810, 421. YOU HAVE ALREADY ISSUED

NYC

CFN FURN
MISS UNIVERSAL, INC
640 5TH AVE NYC

MISS DAY SDR R

SUGGEST THAT BOTH THE TITLE AND CONTENTS OF THE PRODUCTION ARE OBJECTIONABLE AND CONSTITUTES A CLEAR INFRINGEMENT OF OUR VALUABLE PROPERTY RIGHTS, TO WHICH WE STRENDOUSLY OBJECT. WE REQUEST THAT YOU IMMEDIATELY SUSPEND ALL PLANS FOR THIS TELECAST AND

PUBLICITY IN CONNECTION WITH THIS TELECAST WHICH

IMMEDIATELY SUSPEND ALL PLANS FOR THIS TELECAST AND
CEASE DISSEMINATION OF ANY FURTHER PUBLICITY MATERIAL
IN CONNECTION THEREWITH. THIS WILL ALSO CONSTITUTE
NOTICE THAT WE INTEND TO HOLD YOU ACCOUNTABLE FOR
ANY DAMAGES SUSTAINED BY US AS THE RESULTS OF YOUR

INFRINGEMENT OF OUR PROPERTY RIGHTS. PLEASE A
ACKNOWLEDGE IN WRITING THAT YOU INTEND TO COMPLEY

WITH THIS REQUEST.

8 JAN 30 .

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757-9600

MISS UNIVERSAL, INC HERBERT K. LANDON EXECUTIVE DIRECTOR

PLAINTIFF'S EXHIBIT 5

NATIONAL BROADCASTING COMPANY, INC.

THIRTY ROCKEFELLER PLAZA, NEW YORK, N.Y. 10020, CIRCLE 7-8300

BY HAND

LAW DEPARTMENT

February 2, 1970

Miss Universal, Inc. 509 Madison Avenue New York, New York

Gentlemen:

Re: MCCLOUD, WHO KILLED MISS USA?

This will acknowledge receipt of your telegrams of January 30, 1970, to Mr. Julian Goodman and Mr. Mort Werner alleging that the MCCLOUD, WHO KILLED MISS USA? motion picture, scheduled for exhibition on the NBC Television Network, is an infringement of your "property rights."

Please note that MCCLOUD, WHO KILLED MISS USA? was produced and supplied to NBC by Universal TV, A Division of Universal City Studios, Inc. and we have forwarded your telegram to them for appropriate action.

Yours very truly,

Alfred Haber Senior Attorney

mes

cc: Universal TV

PLAINTIFF'S EXHIBIT 6

OFFICIAL ENTRY FORM

MISS UNIVERSE BEAUTY PAGEANT

TO COMPETE FOR THE TITLES

MISS U.S.A. and MISS UNIVERSE

M1SS		
	(Name of State)	

Rules and Regulations

Miss Universe Beauty Pageant Contestants

1. I certify that:

- (a) I received the title stated above in open competition in my state and that I am fully satisfied with the decision of the judges in that competition and the manner in which the competition was conducted.
- (c) I am not now and have never been married and am of good health and moral character. When I arrive in Host City I will have with me a sworn statement signed by my parents or guardian, my sponsor and myself to that effect.
- (d) I have never been a contestant-delegate in a previous Miss U.S.A. or Miss Universe Pageant.
- (e) I am now and have been a resident of my state for a period of at least six (6) months prior to the date of the beginning of the competition in my state.
- 2. I understand: (a) That I will receive prepaid transportation to Host City and return; (b) That I will receive first class accommodations and meals at a leading hotel while in Host City during the Miss U.S.A. Pageant, and if selected as a contestant in the Miss Universe Pageant, then also at the site ("Host City") of the Finals of the Miss Universe Pageant; and at any point where arrangements are made for me to stop on route; (c) That I will be chaperoned during my entire stay in Host City; (d) That I am competing for the titles Miss U.S.A. and Miss Universe for beauty of face and figure, poise and personality; (e) That during at least a portion of said Pageants, I will appear in a bathing suit.

- 3. The procedure by which Miss U.S.A. and Miss Universe will be selected has been explained to and I am satisfied that the judging will b r and impartial and I agree to abuse by the judges' decision.
- I hereby authorize the use of my photograph, likeness, voice recording, autograph and name for all publicity and commercial purposes in connection with the Miss U.S.A. and Miss Universe Pageants.
- 5. I will include at least one long evening gown in the wardrobe that I am bringing to Host City.
- 6. I agree not to be photographed in any swimsuit, or permit public use of my photograph in any swimsuit, other than a "Catalina" swimsuit until sixty (60) days after the completion of the 1967 Miss Universe Pageant. In the event 1 receive the title Miss U.S.A. or Miss Universe or am one of the first four runners-up or one of the remaining ten (10) finalists in either competition, I will not enter into any agreement, without the prior written consent of Miss Universe, Inc., for services to be performed, consisting of modeling, advertising, theatrical or promotional services, or any appearances in which my title or affiliation with the Miss U.S.A. or Miss Universe Pageants is used, in the United States, or if selected Miss U.S.A. or Miss Universe, then anywhere in the world, for the period ending August 15, 1970. In addition, I will not, without the prior written consent of Miss Universe, Inc., appear anywhere in the United States, or if selected Miss U.S.A. or Miss Universe, then anywhere in the world, during said period ending August 15, 1970, in a swimsuit other than a "Catalina" swimsuit, but, if not selected Miss U.S.A. or Miss Universe, then such requirement shall not apply if the use is only for personal recreational purposes.
- 7. Miss Universe, Inc., shall have exclusively, all dramatic, musical, radio, publication, television, personal appearance and motion picture rights in connection with the presentation of the 1967 Miss U.S.A. and Miss Universe Pageants, or any portion thereof, and shall have the right to use and exploit any or all of such rights without consent from or payment to me. I hereby release any claim which I may have by virtue of my participation in the Miss U.S.A. or Miss Universe Pageants, or any use of my photograph, likeness, voice or appearance in connection with such rights, including advertising and promotional material relating to any such exploitation.
- 8. I certify that I am not a party to any present management contract which would in any way cover the services to be performed by me in connection with any award which I may receive as Miss U.S.A. or Miss Universe, or as one of the first four runners-up or as one of the remaining ten (10) finalists in either competition, nor have I made any agreement to share any monies or awards received with any person. I further agree that Miss Universe, Inc., shall have the exclusive right and control over all personal appearances which I may make in the United States as Miss U.S.A. or Miss Universe or as one of the first four runners-up or as one of the remaining ten (10) finalists in either competition during the period ending August 15, 1970.

ADD TO NO. 9

- (f) That your sole obligation, unless I am selected Miss U.S.A. or Miss Universe 1969, is to accept me as a contestant, provided I satisfy all the eligibility requirements and comply with and fulfill all my obligations.
 - (d) I will depart from Host City for my home not later than the day after the selection of Miss U.S.A. 1969, unless I have received awards which entail post-poning my departure for an undetermined length of time, or unless written permission to stay over is obtained from Miss Universe, Inc.
 - (e) I will not incur, and am not authorized to incur, any debts on behalf of Miss Universe, Inc., or with respect to the Miss U.S.A. and Miss Universe Pageants.

- 10. The photograph s of me attached have been taken within the last six months.
- 11. If I am selected Miss Universe, or selected Miss U.S.A. and not subsequently selected as Miss Universe, you shall employ me and I hereby accept such employment, on the following terms and conditions (matter in parenthesis relates to Miss U.S.A. who is not subsequently selected Miss Universe):
 - (a) You hereby employ me as "Miss Universe 1969" ("Miss U.S.A. 1969") to render services to Miss Universe, Inc., as a model and public relations representative, from the date of this agreement until three days after Miss Universe 1970 is selected. I shall receive a salary of \$10,000. (\$5,000.) in such period, less withholdings, payable monthly in accordance with the payroll practices of Miss Universe, Inc. In addition, I shall receive a cash prize of \$10,000. (\$5,000.), one-third of which is to be paid on receipt of my title, one-third on June 1, 1970, and the balance on the third day after the selection of Miss Universe 1970.
 - (b) I agree to furnish the following services as your employee assisting in advertising and promotion of your co-sponsors and such other individuals or companies and their products as you may designate, including but not limited to:
 - (i) Participation in promotional activities; appearances during fashion shows; autographing; meeting and conversing with the public, customers and employees of co-sponsors; appearances as an apparel model or as Miss Universe 1967 (Miss U.S.A. 1967); giving talks and interviews in theatres, clubs, department stores and restaurants, on television, radio and for newspapers.
 - (ii) Endorsing products and allowing my name, likeness and voice to be used in connection with the advertisement or sale of products and for commercial purposes.
 - (iii) Traveling and giving interviews as your schedule of appearances may require, including weekends and holidays.
 - (c) During the term of my employment, Miss Universe, Inc. will book all appearances, prepare my travel and working schedules and handle all arrangements in connection with my activities as Miss Universe 1967 (Miss U.S.A. 1967). I further acknowledge that as of this date I have not engaged another managing agent.
 - (d) You shall furnish a chaperone, selected in your sole discretion, as well as hotel accommodations and transportation facilities, while I am traveling at your request. Reasonable living expenses incurred by me while so traveling shall be borne by you except that such obligation (including hotel accommodations) shall be limited to an amount not to exceed \$25 per day. Upon the expiration of any trip requested by you, you shall return me, at your expense, to my home or to my established base of operations in the United States, whichever point is selected by you, and at the expiration of my employment as "Miss Universe" ("Miss U.S.A.") you will return me to my home, at your expense, provided that my trip home is made within seven days after Miss Universe 1970 is chosen.
 - (e) During the term of this agreement I will not render services to any other employer, and, except as required hereunder, will not make any public appearances as Miss Universe (Miss U.S.A.), endorse any product, or allow my name, likeness or voice to be used in connection with the advertising or sale of any product or service without your prior written permission, both during the term of my employment and for a period of one year thereafter.
 - (f) If during the term of my employment, I refuse to or shall become so mentally, physically, or otherwise incapacitated that I am not able in your reasonable opinion, to carry out my duties, you shall have the right to declare this agreement terminated, and upon your giving me one week's notice to that effect, this agreement shall be terminated, and neither party shall have any further obligations hereunder.
 - (g) It is understood that all proceeds resulting from the performance of my services hereunder are the sole property of Miss Universe, Inc. and I hereby assign and transfer to you all rights to such proceeds.

- (h) The services to be rendered by me and the rights and privileges granted to you by a dereunder are of a special, unique and into the character, the loss of which cannot be adequately compensated in damages in an action at law. It is acknowledged that breach by me of any of the provisions of this agreement will cause you irreparable injury and damage. You shall be entitled to injunctive and other equitable relief in the event of any breach by me of this agreement. Resort to injunctive or other equitable relief shall not be a waiver of any other rights or actions you may have for damages or otherwise, and all rights hereunder shall be regarded as cumulative. No waiver by you of any breach of this agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant or provision.
- (i) You are hereby authorized, in my name, or in your name, to take any action of whatsoever nature or kind, including the commencement of legal proceedings, at your expense, against any person, firm or corporation as you in your sole discretion shall determine, which uses or attempts to use, without your prior written consent, my name, likeness or voice for any purpose whatsoever.
- (j) This agreement shall be governed by the laws of the State of New York applicable to contracts entered into and carried out entirely within such state.
- (k) This agreement contains the entire understanding of the parties hereto and may be revised or modified only by written instrument executed in the same manner.
- 12. If the title "Miss U.S.A. 1969" becomes vacant and I succeed to the title, I agree to serve as "Miss U.S.A. 1969" and perform all the obligations relating to said title contained in this entry form, including the service contract provided in Paragraph 11 above. However, I acknowledge that in such event I shall not be entitled to any of the prizes awarded to "Miss U.S.A. 1969" at the time of her election, including but not limited to the cash prize referred to in Paragraph 11 (a) above.
- 13. I acknowledge ownership by Miss Universe, Inc. and/or Catalina, Inc. and the validity of the trademarks "Miss Universe," "Miss U.S.A.," "Miss United States of America," "Little Miss Universe," "Little Miss U.S.A." and "Miss Hospitality," and further acknowledge that the Miss Universe Beauty Pageant (meaning both the Miss U.S.A. and Miss Universe Pageants) is the exclusive property of Miss Universe, Inc. and that I will not engage in any activities which may damage or otherwise affect such trademarks and/or property rights in any manner whatsoever.
- 14. Any misrepresentation or untrue statement by me or any failure to comply with any of the terms, provisions, restrictions or obligations hereunder, on my part to be performed, shall, at the option of Miss Universe, Inc., result in my disqualification, loss of title and return of any and all prizes awarded, in addition to any other remedies which Miss Universe, Inc. may have, all of which shall be deemed cumulative.

I HEREBY CERTIFY that I have read this official entry form for the 1969 Miss Universe Beauty Pageant; that the answers to the questions are true to the best of my knowledge, and I agree to be bound by all the rules and regulations listed above. Miss Universe, Inc. shall be the sole judge of the accuracy of any of the representations made herein. My signature below and your acceptance and agreement indicated by your signature below shall constitute this entrance form a binding agreement and contract between us.

Date:	(Signature of Entrant)	
THE UNDERSIGNED hereby attest to the good moral represent such entrant is a minor agree to all regulations stated various questions as well as the rules and regulations, have edge and belief the answers are true and correct. We furthe 18 years of age and under 28 years of age at the date of final and has never been married.	above on her behalf. The answers to the been read, and to the best of our knowler certify that the entrant will be at leas	
(Signature of Parent or Guardian)	(Signature of Sponsor)	
Accepted and agreed to: MISS UNIVERSE, INC.	(Address)	
Ву:		

PERSONAL HISTORY FORM

No. 1001 A. 1004 A. 10		int or type)
Address		. /
City	_ Country	Telephone
Place of Birth		Date
Present Citizenship		
(If citizenship is other than place	of birth, give date and	l place of change)
Occupation		
	-1	
From To.	·	Position
Father's Name		Occupation
What schools have you attended?		
Degree	Diploma	Other
Have you ever participated in a be	auty contest?	
ii so, name contest, city, and title -	ii you won	,
Life Ambition		Color of eyes
Life Ambition		
Life Ambition Color of hair. Measurements: Height.		Color of eyes
Life Ambition Color of hair Measurements: Height Bust		Color of eyes
Life Ambition Color of hair Measurements: Height Bust Marital Status	WaistHave you eve	Color of eyes Weight Hips r been married?
Life Ambition Color of hair Measurements: Height Bust Marital Status Do you have any special talents or	WaistHave you even	Color of eyes
Life Ambition Color of hair Measurements: Height Bust Marital Status Do you have any special talents or	WaistHave you even	Color of eyes Weight Hips r been married?
Life Ambition Color of hair Measurements: Height Bust Marital Status Do you have any special talents or Who do you think is the greatest n	WaistHave you even	Color of eyes
Life Ambition Color of hair. Measurements: Height. Bust. Marital Status. Do you have any special talents or Who do you think is the greatest not agent?	WaistHave you even hobbies?nan in the world today	Color of eyes Weight Hips r been married?
Life Ambition Color of hair Measurements: Height Bust Marital Status Do you have any special talents or Who do you think is the greatest marter of the color of the colo	WaistHave you even hobbies?nan in the world todayIf so, whoerse Beauty Pageant?	Color of eyes Weight Hips r been married?
Life Ambition Color of hair Measurements: Height Bust Marital Status Do you have any special talents or Who do you think is the greatest no polyton by the property of t	WaistHave you even hobbies?nan in the world todayIf so, whoerse Beauty Pageant?	Color of eyes Weight Hips r been married?
Life Ambition Color of hair Measurements: Height Bust Marital Status Do you have any special talents or Who do you think is the greatest no polyon have an agent? Why did you enter the Miss University	WaistHave you even hobbies?nan in the world todayIf so, whoerse Beauty Pageant?	Color of eyes Weight Hips r been married?
Life Ambition Color of hair Measurements: Height Bust Marital Status Do you have any special talents or Who do you think is the greatest n Do you have an agent? Why did you enter the Miss University Any other interesting information	WaistHave you even hobbies?nan in the world todayIf so, whoerse Beauty Pageant?on yourselfon	Color of eyes Weight Hips r been married?

PLAINTIFF'S EXHIBIT 7

MISS UNIVERSE, INC.

Executive Offices: 509 Madison Ave., New York, N. Y. 10022

EXCLUSIVE FRANCHISE

For conducting a State competition to designate a Candidate
for entry in the
1969

MISS UNIVERSE BEAUTY PAGEANT

to compete for the titles:

MISS U.S.A.

and

MISS UNIVERSE

STATE:_____

The undersigned, hereinafter called "Franchisee," hereby agrees to sponsor, promote and finance a fair and unbiased competition within the territory assigned according to the rules and regulations set forth by Miss Universe, Inc., hereinafter called "Pageant" and upon the following terms and conditions:

 Franchisee shall pay the sum of \$ by certified check or money order. upon the signing of this agreement to Pageant

- 2. (a) Franchisee shall provide to the winning delegate, in its competition (hereinafter referred to as "Franchisee's delegate" or as the "delegate"), at its expense, first class transportation to, and return from, the site of the Finals of the Miss U.S.A. Pageant and, if such delegate is selected to participate in the Miss Universe Pageant, then to the site of the Finals of the Miss Universe Pageant, which site is hereinafter called "Host City." Nothing contained herein shall in any way affect Pageant's right to determine the method of such transportation in its sole discretion. Franchisee's delegate will depart from Host City for her home no later than one day following the Finals of the Miss U.S.A. Pageant and, if its delegate is selected to participate in the Miss Universe Pageant, then no later than one day following the finals of the Miss Universe Pageant, unless permission to stay over is obtained from the management of Pageant, or delayed departure is attendant to an award she has received. Franchisee shall furnish the winning delegate with an adequate wardrobe which shall include at least one evening gown, a costume symbolic of the state the contestant-delegate represents and a gift symbolic of her state to present to the Host City at the opening ceremonies. Franchisee shall furnish an affidavit attesting to the fact that the wardrobe and gift have been provided to the delegate.
- 2. (b) Franchisee shall deposit in escrow with Pageant the sum of \$100.00 on or before January 1, 1969. This sum is intended to cover incidental expenses of the contestant-delegate while in Host City, Pageant shall deliver to the contestant-delegate upon arrival in Host City, the said sum of \$100.00 in cash.
- 2. (c) As used in paragraph 2 (a) above, "transportation" shall mean first class air travel unless Host City is less than 500 miles from the home of the contestant-delegate.
- 3. Franchisee shall hold the finals of its competition for selection of a delegate to the Miss U.S.A. Pageant at least 21 days prior to the final judging in the Miss U.S.A. Pageant.
- 4. Pageant shall accept Franchisee's delegate as a contestant in the Miss U.S.A. Pageant and, if selected as Miss U.S.A., as a contestant in the Miss Universe Pageant at Host City, and shall furnish hotel accommodations and meals for her during the competition.
- 5. Franchisee shall handle publicity on its competition; release to local newspapers, national news syndicates and special publications, the photographs of its winning delegate for national and world-wide publicity, and supply copies of the aforementioned, including evident of its use by all media, no later than 15 days after the end of each calendar quarter; and paint Pageant to take and/or use movie film or tape recordings of Franchisee's finals for selection of a delegate, for whatever purposes Pageant may designate.
- 6. Pageant shall have exclusively, all dramatic, musical, radio, publication, television, personal appearance and motion picture rights in connection with Franchisee's competition for the selection of a delegate to the Miss U.S.A. and Miss Universe Pageants and Pageant shall have the right to use and exploit any or all such rights without consent from or payment to Franchisee. Franchisee shall include in any contract or release signed by its candidates, the following provision and, shall, in addition, obtain the consent of parents or guardians, when such consent is necessary to make any such agreement a binding obligation:

"Miss Universe, Inc. shall have exclusively, all dramatic, musical, radio, publication, television, motion picture and personal appearance rights in connection with the presentation of the (insert description of Franchisee's competition for selection of a delegate), or any portion thereof, and shall have the right to use and exploit any or all such rights, without consent from, or payment to me. I hereby release any claim which I may have by virtue of my participation in (insert description of Franchisee's competition for selection of a delagate), or any use of my photograph, likeness, voice or appearance in connection with the exercise of any such rights, including advertising and promotional material relating to any such exploitation."

Franchisee shall cooperate with Pageant in the exploitation of any such rights, provided, Pageant pays to Franchisee, any reasonable expenses which Franchisee is authorized to incur in connection therewith.

7. All references to the Miss Universe Beauty Pageant on Franchisee's letterhead or in promotional material shall be subject to Pageant's prior written approval, and shall contain the wording "In affiliation with the Miss Universe Beauty Pageant." Such wording shall not be

more prominently placed than the name of Franchisee or Franchisee's competition and shall be of a type which is not more than one-fourth the size of the type used to designate the name of Franchisee or its competition.

- 8. As soon as Franchisee's delegate is selected, Franchisee shall send photographs and photographic negatives, the filled-in official Miss Universe Beauty Pageant entry form and a fact sheet about her directly to Miss Universe, Inc., 509 Madison Ave., New York, N. Y. 10022. All photographs shall be of excellent quality and focus suitable for reproduction purposes, shall be on glossy stock and at least one photograph shall be in a "Catalina" swimsuit.
- 9. Franchisee's delegate for the title of Miss U.S.A. or Miss Universe shall not permit her photograph to be used in connection with any products or services without the prior written permission of Pageant until at least 60 days after the final awards in the Miss Universe Pageant have been made at Host City.
- 10. Franchisee shall not incur, and is not authorized to incur, any obligations or debts for or on behalf of Pageant, any co-sponsors or any sponsors of radio or T.V. shows, covering the event. Franchisee acknowledges that it understands that Pageant, and the co-sponsors, are in no way obligated to pay for any debts or fulfill any promises made by the Franchisee in conducting this competition, except as in this agreement specifically provided. Nothing contained herein shall be deemed to constitute this a joint venture or partnership. The only obligation on the part of Pageant with respect to Franchisee's delegate is to accept her as a contestant, provided she satisfies all the eligibility requirements and complies with and fulfills all her obligations.
- 11. Pageant shall notify Franchisee of the names of Pageant's co-sponsors. Franchisee shall use its best efforts to cooperate with Pageant and Pageant's co-sponsors. Sponsors of Franchisee's competition shall not conflict, or be competitive, with Pageant's co-sponsors.
- 12. Franchisee shall not assign this franchise without the prior written consent of Pageant. Any attempted assignment without the consent of Pageant shall be void.
- 13. Franchisee shall not enter into any management contract with its delegate, nor will it share in any monies or awards received by its delegate from Pageant, except, that nothing contained herein shall preclude any management contract conditioned upon the delegate not being selected Miss U.S.A., Miss Universe or one of the first four runners-up in either contest. Franchisee shall not impose or require any delegates to pay any entrance or similar fees as a condition to being permitted to enter and participate in Franchisee's competition.
- 14. As of the essence of this agreement, Franchisee and its delegate shall be bound by the following requirements:
 - (a) Delegate must be a citizen of the United States and a resident of her state for at least six months prior to the date of the beginning of Franchisee's competition, and be at least 18 years of age and under 28 year of age at the date of final judging of the Miss U.S.A. Pageant. Franchisee's delegate must bring with her a birth certificate or passport or a certified copy of other public records acceptable to Pageant, establishing proof of her date of birth.
 - (b) Delegate must be of good health, good character and possess poise, personality and beauty of face and figure. All judging must be made on these points and in accordance with the official judging procedure furnished to Franchisee.
 - (c) Delegate must never have been married and must bring with her a sworn statement that she has never been married and Franchisee is held responsible for this proof.
 - (d) No delegate is eligible to compete more than once in a Miss U.S.A. or Miss Universe Pageant. A delegate may, however, compete more than once in a Franchisee's area.
 - (e) If for any reason the delegate winning Franchisee's contest is disqualified or released from appearing at the Miss U.S.A. Pageant, the next choice of the judges shall be considered the winner. Decisions of the judges shall be final.
 - (f) All delegates must wear a "Catalina" swimsuit. No photographs of the winning delegate wearing a swimsuit shall be released for publication unless she is wearing a "Catalina" swimsuit.
 - (g) Delegate must not have entered into a management contract with any individual, corporation or organization and must not have given any written or verbal endorsement of any product of any commercial organization, in effect at the time she becomes a delegate to the Miss U.S.A. Pageant, and which will be binding on her in her capacity as Miss U.S.A., Miss Universe or as one of the first four runners-up or one of the remaining ten (10) finalists in either competition. Further, delegate shall not use or publicize her title in connection with any employment during a period of one year following the Miss Universe Beauty Pageant without Pageant's prior written consent.

145a

- (h) Delegate must not have entered into any written or verbal agreements or contracts with any individual, corporation or organization for her services to take place after the final judging of the Miss Universe Beauty Pageant which will in any way conflict with the obligations she assumes. Delegate and her parents or guardian must agree prior to the judging to accept the obligations as well as the awards she may win at the Miss U.S.A. and Miss Universe Pageants, and failure to so agree will result in the disqualification of the delegate.
- (i) Delegate must agree prior to the judgin; that in the event she becomes Miss U.S.A., Miss Universe, or is one of the first four runners-up or one of the remaining ten (10) finalists in either competition, she will not enter into any agreement, without the prior written consent of Pageant, for services to be performed, consisting of modeling, advertising, theatrical or promotional services or any appearances in which her title or affiliation with the Miss U.S.A. or Miss Universe Pageants is used, in the United States, or if selected Miss U.S.A. or Miss Universe, then anywhere in the world, for the period ending August 15, 1970. In addition, she will not, without the prior written consent of Pageant, appear anywhere in the United States, or if selected Miss U.S.A. or Miss Universe, then anywhere in the world, during said period ending August 15, 1970, in a swimsuit other than a "Catalina" swimsuit, but, if not selected Miss U.S.A. or Miss Universe, then such requirement shall not apply if the use is only for personal recreational purposes.
- Franchisee shall faithfully follow all rules for ethical conduct of the competition and main. n
 the highest standard of judging.
- 16. All events shall be conducted and all contestants selected in a fair and impartial manner; reliable and competent persons shall be engaged for judging the events; fair and objective standards, criteria and procedures in a written formulation shall be furnished to guide the judges in all their determinations; at the request of Pageant, Franchisee will deliver to it a copy of the standards, criteria and procedures used in judging the events.
- 17. Franchisee shall certify to Pageant on Pageant's form such details of its competition as may be requested by Pageant, including, but not limited to, the date and place of competition, names and addresses of judges, names of sponsors, names and addresses of the winner and four runners-up and number of contestants participating. Such certificate shall be mailed to Pageant within 48 hours after completion of Franchisee's competition.
- 18. Franchisee acknowledges ownership by Pageant and/or Catalina, Inc., and the validity, of the trademarks "Miss Universe," "Miss United States of America," "Miss U.S.A.," "Little Miss Universe," "Little Miss U.S.A." and "Miss Hospitality" and further acknowledges that the Miss Universe Beauty Pageant (meaning both the Miss U.S.A. and Miss Universe Pageants) is the exclusive property of Pageant and Franchisee agrees that it will not jeopardize such trademarks and/or property rights in any manner whatsoever.
- 19. Franchisee will not be a participant in any manner or contribute in any way to the holding of a beauty competition not in affiliation with the Miss Universe and/or Miss U.S.A. Beauty Pageants.
- 20. Any misrepresentation or untrue statement by Franchisee or its delegate, or failure to comply with any of the terms, provisions, restrictions or obligations of this agreement on their part to be performed shall, at the option of Pageant, result in the loss of this franchise, disqualification of the Franchisee's winning delegate, and loss of her title and return of any and all prizes awarded, in addition to any other remedies which Pageant may have, all of which shall be deemed cumulative.

Dated at	, the	day of	, 19	
Short 's		(Franchisee)		
	By:			
Accepted and agreed to:	pro-man	(Executive Title)		
MISS UNIVERSE, INC.				
Ву				
Executive Director		Date		

THE MISS U.S.A. BEAUTY PAGEANT



MEMO

TO:

The "Class of 1969"

Miss U.S.A. Contestants

FROM:

Bob Parkinson, Field Director

SUBJECT:

The 1969 Miss U.S.A. Pageant

DATE:

April 30, 1969

With your arrival at Miami International Airport on May 15, 1969 begins an exciting ten day period of fun, sightseeing, rehearsing, and competing.

One of you will go on to fame, fortune, and a year of traveling as our Miss U.S.A. of 1969, the most beautiful girl in America. It could be you!

I am sending you this general information so that you and your family will know more about the activities that take place during your stay in Miami Beach.

Hotels - You will stay in one of five Miami Beach luxury hotels:

The Fontainebleau....305 - 538-8811
The Monte Carlo.....305 - 531-1271
The Algiers......305 - 531-6061
The Shelborne.....305 - 866-8721
The Shore Club.....305 - 538-7811

You will room with one other contestant and your Miss U.S.A. hostess-chaperone from the Miami area. You will eat breakfast, and dinner at your host hotel. Luncheon is served at Miami Beach Auditorium in our Canteen, where all contestants eat together. Only contestants, hostesses, and members of the Executive staff are permitted in the Canteen.

Expenses - Your hotel, food, local transportation, hair styling, tips to hotel personnel, etc., are all provided by the pageant. Of course you may incur incidental expenses for items such as hair spray, film, an occasional hamburger, or for cleaning and pressing. You have received \$100 from your State Pageant for your personal use.

Hostess-Chaperones - These wonderful Miami area ladies are all volunteers and outstanding citizens of their community. They give up their husbands and families for 10 days to help you enjoy your stay. Your hostess will meet you at the airplane upon arrival and will be with you all the time until you step back onto the airplane after the pageant.

Medical care - A medical committee of leading Miami area doctors offers 24 hour a day medical attention as needed. Nurses are constantly on duty in the Pageant First Aid Rooms in The Miami Beach Auditorium.

Beauty Salon - Staffed by experienced hair dressers, a complete beauty salon is set up in Miami Beach Auditorium near the dressing rooms. Each contestant has the full use of these facilities.

Make-up - A staff of make-up are also available in the Miami Beach Auditorium and will aid you in anyway possible.

Swimsuit - You will receive a beautiful Catalina swimsuit for competition use but you should bring one or two of your own for beach and pool during free time. You will be given shoes to wear with your swimsuit.

Free time - While your schedule is full and busy there will be times when you and your hostess can sightsee, take pictures, swim, or just soak up the beautiful Florida sunshine.

Prohibited - Dating and consumption of alcoholic beverages are prohibited during the pageant.

Security - Two uniformed officers from the Miami Beach Police Dept. are with the group at all times. In addition a staff of four uniformed women officers are in attendance.

Special Note- You are now a celebrity. When interviewed, think before you speak....you will be reading what you say on the front page of tomorrows newspaper! Further there are many "beauty pageants". Few if any are run with the dignity and decorum of the Miss U.S. A. and Miss Universe Pageants. You may be approached by other pageants. We urge you and your parents to weigh these requests carefully. If you are in doubt, ask your parents to call us in New York and we will try to advise you.

Executive Director - Directing all affairs since 1965, has been Mr. Herbert K. Landon, our "boss". Mr. Landon is a tremendous personality and world famous public relations executive. He is a family man, has been married for 32 years, has two grown daughters, and two grand children. He has the final say on all pageant affairs in Miami Beach.

Rehearsals - Daily rehearsals will be scheduled in Miami Beach. Many millions of people will see you on the CBS television special Saturday, May 24, 1969. We are fortunate to have as our pageant Producer-Director, Mr. Edward Pierce. Mr. Pierce is one of the most highly respected men in the television industry. More important, he is a gentleman, and a highly talented, professional producer with a most competent staff. Being part of a 90 minute color television special is an exciting, fascinating, and "fun" adventure, but it also requires discipline and an attention to detail. If you approach it from that point of view when you're rehearsing on stage you'll have the time of your life. You are now a "pro". "Pros" discipline themselves on stage with these basic rules:

- 1. Be on time
- 2. Keep quiet and listen carefully
- 3. Remember instructions
- 4. Be "up" and ready to deliver when the show goes.

Mr. Pierce loves the sun! If everybody cooperates you'll never leave the auditorium later than 4:30 PM and frequently earlier. There are no evening rehearsals. Be sure to wear comfortable clothes to rehearsal. Slacks and shorts are permitted and loafers or tennis shoes are highly recommended.

Clothing- Any man who tries to tell 51 girls what to wear is obviously crazy..... but I'll try. You will need:

- One, possibly two, full length evening gowns.
 You can easily make one do. We have no color
 or style preference but you should bring what suits
 you best.
- 2. Rehearsal clothes, casual things like, shorts, slacks, summer dresses, etc. Comfortable low heeled or tennis shoes.
- 3. Two cocktail dresses and three or four more dresses that you would describe as "between casual and cocktail". You'll dress up for dinner at your hotel each night.
- 4. At least one swimsuit for beach use.
- 5. Appropriate shoes for all your outfits.
- 6. Your State Costume.

Schedule - Here is a rough outline of what you'll do. You will receive a complete, printed hour by hour schedule when you arrive in Miami Beach. (This is called the 1969 Miss U. S. A. Guide Book).

Thursday, May 15
Arrivals and hotel check in
Official Registration
Special Reception with City and State Officials

Friday, May 16
Registration (continued), photos, swimsuit and shoe fittings
Orientation Meeting

Saturday, May 17
Rehearsal
Open evening for sightseeing with hostess

Sunday, May 18
Church Services (according to your preference)
Rehearsal
Opening Ceremonies at Miami Bayfront Park (you'll present token gift furnished by your State Director to Miami area Mayors)

Monday, May 19
Photography (Movie and stills) at Haulover Beach
Rehearsal

Tuesday, May 20 Rehearsals Miss U.S.A. Motorcade, Miami Beach

Wednesday, May 21
Rehearsal
PRELIMINARY COMPETITION.... Best 15 in Swimsuit
announced (Please note that even though a girl does not
win in Swimsuit, she may still be a finalist on Saturday).

Thursday, May 22
Rehearsal
1/2 the contestants will meet with Judges for the
Personality Judging

Friday, May 23
Rehearsal
Other 1/2 of contestants meet with Judges for the
Personality Judging

Saturday, May 24
Rehearsal
Full Dress Rehearsal for TV at 2 PM
THE MISS U. S. A. PAGEANT on the CBS television network
V. I. P. Party

Sunday, May 25
Out processing and departure for home

Important reminder - We must have your Official Entry Form, Birth Certificate, and Notarized Statement that you are not now and never have been married.

Each year we look forward with great anticipation to the arrival of 51 beautiful young women from all over the United States. From every indication the "Class of 1969" will be the most outstanding ever to journey to Miami Beach in quest of the coveted Miss U.S. A. crown. You will have a wonderful time. You will be treated like the celebrity that you are. We have been working long and hard all year so that the Pageant can be a fantastic experience for you. We are delighted that you will be joining us for the last 10 days of this effort. With your complete cooperation and enthusiastic support we will crown Miss U.S. A. 1969 in that splendid atmosphere of friendship and goodwill which has so long surrounded the Miss U.S. A. and Miss Universe Pageants.

See you in Miami Beach!!!

Bu Far

Bob Parkinson Field Director

REP/jj

THE MISS U.S.A. BEAUTY PAGEANT

MISS UNIVERSE

TO ALL STATE PAGEANT WINNERS:

First, please accept my congratulations on winning your State Pageant. I wish you the very best of luck in Miami Beach.

Enclosed you will find a record and lyric sheets for two production numbers you will be required to learn. If you take the time to memorize these two songs before coming to Miami Beach, it will greatly aid my staff in their production work, and it will give us more time to devote to your presentations.

My staff is.... Associate Producer, Lynn Wellenkamp... Art Director, Don Shirley Jr.... Music Director, Bernard Green... Pianist, Sammy Liner... Writer, Don Epstein. These people you will have just slight association with, but the following will be your constant companions during the week..... Choreographer, Gene Bayliss.... Special Assistants On Stage, June Montagna, Chris Welker, Suzanne Grief, and Barbara Ward.

Your CBS-TV Staff consists of.... Producer, Charles Andrews... Director, Sid Smith.... Associate Producers, Adrienne Kalison and Clarence Schimmel... Writer, Deanne Barkley.

The Production Staffs are all devoted people and have only one object in mind. That is to make your presentations to the theatre and television audiences the best possible.

Please pay particular attention to your State Costume and put in every effort possible to make it interesting, creative, and exciting. There is an award for the Best State Costume and this is the costume the judges, thousands in the theatre, and millions in the television audience see you in for the first time. Use your imagination, it is not the most expensive but the most original which wins the award. The costume must be symbolic of your state.

I know that we can depend on your cooperation to help us have the finest Miss U.S.A. Beauty Pageant ever. The CBS telecast is on May 24th from 10:00 PM to 11:30 PM, EDT.

I will look forward to meeting you all.

Best wishes,

Edward Pierce

Pageant Producer-Director

DEFENDANTS' EXHIBIT D

THE NEW YORK TIMES, TUESDAY, SEPTEMBER 25, 1973



UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

The issues in the above entitled action having been brought on regularly for trial before the Honorable Whitman Knapp, United States District Judge, on March 13 and 14, 1974, and at the conclusion of the evidence, defendants having moved the Court to dismiss the complaint, and the Court having granted the said motion, it is,

ORDERED, ADJUDGED AND DECREED, that defendants, NATIONAL BROADCASTING CO., INC., AND UNIVERSAL CITY STUDIOS, INC., have judgment against the plaintiff, MISS UNIVERSE, INC., dismissing the complaint.

Dated: New York, N. Y. March 15, 1974

s/ Raymond F. Burghardt Clerk

U.S. DISTRICT COURT FILED MAR 15 1974 S. D. OF N. Y.

MICROFILM MAR 18 1974

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Notice is hereby given that MISS UNIVERSE,
INC., the plaintiff above named, hereby appeals to
the United States Court of Appeals for the Second
Circuit from the final judgment in favor of the
defendants, National Broadcasting Co., Inc. and
Universal City Studios, Inc., dismissing the complaint herein, entered on the 18th day of March, 1974.
Dated: New York, New York
March 26, 1974

s/ Myron Kove
MYRON KOVE
Attorney for
MISS UNIVERSE, INC.
747 Third Avenue
New York, New York 10017
(212) 421-4322

COUDERT BROS., ESQS.
200 Park Avenue
New York, New York 10017
Attorneys for Defendants
National Broadcasting Co., Inc.
and Universal City Studios, Inc.

SERVICE OF 2 COPIES OF THE WITHIN
appendey
IS HEREBY ADMITTED.
DATED: June 25, 1974 Condat Sorthers
Attorney: for delts-oppelles -

- Mary 1

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